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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Third periodic report

NETHERLANDS[*]

[resubmitted 28 July 2000][**]

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[*] This report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

[**] The State party submitted in 1995, 1997 and 1998 reports concerning the Netherlands and separately the Netherlands Antilles. These reports were consolidated and resubmitted in 2000.

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I. INTRODUCTION

1. In pursuance of article 40 of the International Covenant on Civil and Political Rights, which entered into force with respect to the Kingdom of the Netherlands on 11 March 1979, the present report is submitted in accordance with the decision and guidelines on periodic reports adopted by the Human Rights Committee on 22 and 27 July 1981 as revised at the 1415th meeting on 7 April 1995. This third periodic report takes into account the discussion of the initial and second report in the Committee, and the progress made on national legislation and practice with regard to the implementation of the individual articles of the Covenant. The Kingdom of the Netherlands has made use of the possibility to report over a period that extends beyond the usual five year period. The report for the European part of the Kingdom covers the period September 1986 to January 1996. Due to variety of reasons, considerable time has lapsed between the submission of this report in 1997 and its publication. In order for the Committee to be able to consider developments in the Kingdom in relation to the Covenant as much as possible to the present date, two supplements have been incorporated in this report, containing updates on the Netherlands Antilles and Aruba respectively, covering the period up to 1998.

2. The subjects which were dealt with in the previous report and which remained unchanged in the period with which this report deals, are not commented upon.

II. STRUCTURE OF THE KINGDOM OF THE NETHERLANDS

3 . See Core document pp. 8-45, nos. 19-175.

III. THE NETHERLANDS (EUROPEAN PART OF THE KINGDOM)

A. Revision of the Constitution in 1983, 1987 and 1996

4. As was mentioned in Chapter II, Part A, paragraph 6 of the second periodic report submitted by the Kingdom of the Netherlands in 1988, a completely revised and modernized Constitution of the Kingdom entered into force on 17 February 1983.

5. A salient feature of the revised Constitution of 1983 is the concentration of provisions on civil and political rights in one chapter. The fact that this is the first chapter of the Constitution reflects the view that the Constitution itself allows scope for these civil and political rights, irrespective of the extent to which this may burden the powers and increase the responsibilities of the Government. The chapter relating to the individual's civil and political rights forms an independent section of the Constitution, equal in importance to the other sections

6 . Directly after the Constitution entered into force, the Ministry of the Interior requested the Dutch Section of the International Commission of Jurists (NJCM) to study the effects of the implementation of Chapter I of the Constitution ("Civil and Political Rights") on Dutch legal practice. The NJCM began the study in 1984 and published a documentary report covering the period 1984-1990 in April 1991. The report describes how the fundamental rights laid down in the Constitution have affected legislation, the administration of justice and public administration. The areas examined in the report include ways in which fundamental rights may be restricted, horizontal effect, the monitoring of the constitutionality of the law by the legislature itself, judicial review of national legislation in the light of the fundamental rights, and implementing legislation.

7. The NJCM and the National Bureau Against Racism receive an annual subsidy from the Ministry of the Interior and the Ministry of Justice.

8. Further amendments to the Constitution were made in 1995, whereby the procedure for amending the constitution was simplified in that the Upper House no longer needs to be dissolved after the first reading of a proposed constitutional amendment.

Under the revised Constitution, the armed forces are made up of volunteers but may also include conscripts. This means that it became possible to abolish conscription. However, conscription as such was retained, but the regulation of the actual call-up was delegated to the legislature.

The revision of the Constitution was concluded when the Upper House dismissed a proposal which would have made it possible to replace members of the representative assemblies who became pregnant. The full text of the revised Constitution was published in the Bulletin of Acts and Decrees 1996, no. 218.

B. Amendments to the Constitution pending in Parliament

9. Pending in Parliament is a proposal to declare that Dutch is the language of the Kingdom. This does not mean that other languages are excluded. The proposal was initiated by Parliament. Another proposal concerns the introduction of the referendum, which would enable those who are entitled to vote to reject a law that has been passed by Government and Parliament. This also applies to the decisions of local authorities.

C. Relationship between international law and national law

Direct effect

10. The first matter which requires consideration is the extent to which international law has direct effect within the national legal order, i.e. the scope allowed for this by national constitutional law. As far as written international law is concerned, the Dutch constitutional system adheres to the principle of monism. Article 93 of the Constitution states that provisions of treaties and of resolutions by organizations of international law, which may be binding on all persons by virtue of their contents, shall become binding after they have been published.

Primacy

11. The second question is that of primacy, i.e. whether international law takes precedence over national law. As far as the relationship between treaties and statute law is concerned, article 94 of the Constitution states that statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties that are binding on all persons or of resolutions by organizations of international law.

12. Articles 93 and 94 of the Dutch Constitution refer to self-executing treaty provisions, that is, treaty provisions which are formulated in such a way that they grant rights to or impose obligations on individuals without requiring implementation under national law. Such provisions are therefore suitable for direct enforcement by the courts. The question of whether a treaty provision is self-executing is ultimately a matter to be decided by the courts. Case law defines the following criteria for determining this question:

(a) the nature, content and purpose of the provision;
(b) the formulation or wording of the provision;
(c) the intent of the parties to the treaty;
(d) the presence or absence of legislation implementing the treaty; whether it is possible to apply the treaty provision directly under national law.

D. Civil and political rights of public servants

13. The second Kingdom report mentioned in para. II. F the submission to Parliament of bills amending the provisions in the Central and Local Government Personnel Act, the Military Personnel Act of 1931 and the Conscripts (Legal Status) Act regarding the exercise of fundamental rights by public servants, military personnel and conscripts. The purpose of these bills was to give statutory force to certain restrictions imposed on the exercise of fundamental rights by public servants. As was reported earlier, these restrictions generally mean that public servants must refrain from making their thoughts or opinions public and from exercising the right of association, assembly and demonstration where the exercise of those rights would not be compatible with the proper performance of their duties or the adequate functioning of the public service, insofar as the latter are connected with the performance of their duties. The Acts in question entered into force on 2 November 1988.

14. In addition, in 1988 new legal provisions regarding travel restrictions on public servants and military personnel entered into force. These provided for two types of travel restriction, imposed in the interests of national security. Firstly, restrictions are imposed on the right of military personnel, conscripts and public servants working for the intelligence and security services to leave the country. These individuals are not allowed, unless granted an exemption or instructed otherwise, to travel to or stay in countries where an armed conflict is in progress and to travel to or stay in countries where this is deemed by Royal Decree to pose a particular risk to the security and other vital interests of the state (or its allies). These provisions can be found in Section 12d of the Military Personnel Act, Section 2e of the Conscripts (Legal Status) Act and Section 21 of the Intelligence and Security Services Act. Other travel restrictions exist which do not affect the right to leave the country, but do constitute a breach of personal privacy since they impose obligations with regard to private travel plans. They oblige civilian officials employed by the Ministry of Defence with access to secret information related to the security of the state to give notification of their intention to travel to or stay in certain countries. The official in question can then be informed as to the attendant security risks and may be interviewed after his return so that, if the interview should indicate that lie has, either knowingly or unknowingly, been in circumstances which may entail a security risk, measures can be taken to limit the consequences. This is provided for in Section 125f of the Central and Local Government Personnel Act and article 91a of the Ministry of Defence (Civilian Officials) Regulations based thereon.

In 1996 a provision was added to Title III of the Central and Local Government Personnel Act to the effect that competent authorities may not, without objective justification, make a distinction between public servants on the basis of a difference in length of service and in the conditions governing an appointment or its extension or termination.

E. International Covenant on Civil and Political Rights

Article 1: Right to self-determination

15. See Core document, p. 10, nos. 30-32.

Article 2: Non-discrimination

16. There are no new developments to report with regard to the means of implementation of article 2 of the Covenant. This subject was discussed extensively in the first and second periodic reports and particular attention was given to the content and meaning of article 1 of the Dutch Constitution.

17. See also Core document, pp. 48-52, nos. 178-193.

Article 3: Equal rights of men and women

18. Articles 3 and 26 were treated separately in the second periodic report. However, in this report, due to their interrelated nature, these articles on discrimination will be jointly dealt with under article 26.

Article 4: Restrictions on derogations from obligations under the Covenant

19. No new developments under article 4 have occurred. Reference can be made to the second periodic report.

20. See Core document, pp. 65-69, nos. 252-274.

Article 5: Prohibition of narrow interpretation of the Covenant

21. The first paragraph of article 5 has a direct bearing on the issue of the relationship between fundamental rights. The second report from the Netherlands touched upon this matter.

22. In the reporting period under consideration, the effect of the relationship between fundamental rights on society has been a factor in the introduction of several laws. The relationship between the principle of nondiscrimination and other fundamental rights has played a particularly important role. Examples of legislation affected by this relationship include:

(a) the Equal Treatment Act, which deals, among other things, with the relationship between the right to equal treatment and freedom of education;

(b) amendments and additions to the provisions of the Criminal Code whose purpose is to curtail discrimination, namely articles 90 quater, 137f, 137g and 429 quater, which deal with the relationship between freedom of expression and the ban on discrimination; and

(c) amendments and additions to article 15 of Book 2 of the Civil Code which deals with the relationship between freedom of association and the ban on discrimination.

For further information on the role of relationship between the principle of non-discrimination and other fundamental rights in the Equal Treatment Act and the Criminal Code the reader is referred to the sections on articles 3 and 26 of the Covenant.

23. As emphasized in the previous periodic report, the Netherlands Government attaches great importance to the dialogue with the Committee and would be interested to learn the views of the Committee members on the question of "conflicting fundamental rights".

24. In respect of paragraph 2 of this article, the first periodic report stated that under Dutch law the most favourable provision takes precedence over narrower treaty or national provisions. This conclusion still fully applies.

Article 6: Right to life

25. As stated in the second periodic report, capital punishment is banned under article 114 of the Constitution. The Netherlands committed itself to the ban on capital punishment at international level by ratifying the sixth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (on 5 February 1986) and the second Optional Protocol to the International Covenant on Civil and Political Rights (on 26 March 1991).

26. A revised Act governing the criminal law and disciplinary procedures applicable to members of the armed forces entered into force on 1 January 1991. The comprehensive revision amended all provisions allowing for the imposition of capital punishment, in order to bring Dutch legislation fully into line with the aforementioned constitutional and international legal standards.

27. With regard to the statutory framework for the use of firearms and police instructions on the use of force, the following developments should be noted: on 20 December 1988, the Act of 14 December 1988 partially amending the Police Act (Bulletin of Acts, Orders and Decrees, No. 576) and the accompanying Code of Police Conduct came into force. Section 33a of the amending Act establishes the powers of the police to use force under certain circumstances and to search persons in the interests of safety. Until this Act was passed, there had been no statutory basis for these powers. They are set forth in detail in the Code of Police Conduct, which is based on Section 34 of the amending Act. As a result of the establishment of a central code, the codes previously drawn up by the burgomasters of the municipalities with a municipal police force, the National Police Code of Conduct and the Guidelines for Municipal Officers on Secondment have now lapsed. The sections of the Code of Police Conduct relevant here are:

(a) Use of force by the police (Articles 2 to 8);

(b) Searches in the interests of safety (Articles 9 and 10);

(c) Care of intoxicated persons (Article 11).

28. The Police Act 1993 entered into force on 1 April 1994. Section 8 of the Act provides for the use of force by police officers in certain circumstances. It also confers powers to conduct body or clothing searches in certain circumstances. The right to use force and to conduct security searches are elaborated in more detail in the official instructions for the police, the Royal Netherlands Military Constabulary and special investigative officers. The official instructions also contain guidelines on the use of handcuffs by the police, permanent camera surveillance of and medical assistance to detainees.

29. The ban on capital punishment was a key factor in the case of a member of the American armed forces stationed in the Netherlands, who was accused of having murdered his wife. The Netherlands was under an obligation to extradite this individual to the United States under the NATO Status of Forces Agreement, since the United States had primary jurisdiction to prosecute the suspect. However, under the applicable American law, the suspect could be sentenced to death and the United States was not prepared to guarantee that the death penalty would not be carried out in this case. The extradition of the suspect, directly resulting in the imposition and possible carrying out of the death penalty, would have contravened article 1 of the Sixth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms. On 30 March 1990 the Netherlands Supreme Court ruled that neither of the treaties took precedence over the other and that in this case the interests served by observing each of the treaties should be weighed up. In the opinion of the Supreme Court, the only possible decision was one in favour of the suspect, in view of the great weight which must be attached to the right not to undergo the death penalty.

Article 7: Prohibition of torture

30. On 21 December 1988 the Kingdom of the Netherlands acceded to the UN Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment. At the same time the Kingdom recognized the competence of the Committee against Torture to receive communications from other States Parties and to receive communications from or on behalf of individuals who claim to be victims of a violation. The Convention entered into force for the whole Kingdom on 20 January 1989.

31. In support of the ratification of the Convention, the Act implementing the Convention against Torture was passed on 29 September 1988 and also entered into force on 20 January 1989. This Act

contains a definition of the offence of torture consonant with that in national law. The Act puts into practice the principle, prescribed by the Convention, that a person who commits such an offence in a country which is a signatory to the Convention is also criminally liable in the other States Parties.

32. Section 1 of the Act implementing the Convention defines the offence of torture as follows:

(a) Assault committed by a public official or other person acting in an official capacity in the exercise of his office on a person who has been deprived of his liberty, for the purpose of obtaining information or a confession, punishing that person, intimidating him or another person or forcing him or another person to perform certain acts or to allow them to be performed, or out of contempt for his right to be treated as an equal human being shall, if such behaviour is of such a nature that it is capable of assisting the achievement of the objective in question, be deemed to constitute torture, the penalty upon conviction of this offence shall be a term of imprisonment not exceeding fifteen years or a fifth category fine.

(b) The intentional inducement of a state of acute anxiety or any other form of serious mental disturbance shall be deemed to constitute assault.

(c) If the offence leads to death, the offender shall be liable to life imprisonment or a term of imprisonment not exceeding twenty years or a fifth category fine.

33. The Netherlands Government presented its first periodic report based on article 19 of the Convention to the Committee against Torture in 1990 (see CAT/C/9/Add. 1). It was dealt with in Geneva on 25 April 1990. The second report (CAT/C/25/Add. 1) was considered by the Committee in the spring of 1995.

34. On 12 October 1988 the Kingdom of the Netherlands also acceded to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which entered into force on 1 February 1989. The key element of this Convention is the competence of the specially appointed Committee to inspect all places where individuals are detained by the authorities. The Netherlands was designated (subsequent to lots being drawn) for inspection by the Committee in 1992. The European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) visited the Netherlands from 30 August - 8 September 1992. The CPT's report on the visit to the Netherlands was published on 15 July 1993 in CPT/Inf(93)15. The conclusions of the Committee were that overall prison conditions were satisfactory, no torture was found in penitentiary institutions in the Netherlands and that, in general, persons deprived of their liberty were treated well. Furthermore, the Committee stated that material conditions in Dutch penitentiary establishments (prisons, remand centres, youth custodial institutions) were very good, while conditions in most of the places of detention of police establishments were satisfactory. Generally speaking, complaints procedures in cases of perceived ill treatment by the police could be considered good. Contacts between staff members of the establishments and the inmates were on the whole regarded as quite satisfactory. The response of the Netherlands Government to the CPT on its visit to the Netherlands can be found in CPT/Inf(93)20 of 1 September 1994 (for easy reference enclosed). In the response additional information was provided on various aspects of Dutch policy and its implementation.

35. As noted in the previous periodic report, the right to the inviolability of the person was included in the Constitution in 1983. The five-year transition period which the legislature was granted in order to adjust any provisions which contravene this right expired in February 1988 and this right must now be fully taken into account.

Medical Research Involving Human Subjects Act

36. Following the drafting and introduction to the Lower House of a Bill on medical research involving humans (no. 22 588, see annex), the question arose of whether the Bill's provision for non-therapeutic medical research involving minors and adults who cannot be deemed capable of

reasonably assessing their interests in this regard (incapacitated persons) is legally and ethically permissible. Furthermore, there were doubts as to the medical necessity for conducting non-therapeutic medical research with incapacitated persons. The Netherlands Government decided to set up a committee of experts to make recommendations for the statutory regulation of medical research with minors and incapacitated adults on the basis of medical opinion on the need for such research and ethical views on its admissibility. The committee, headed by Professor Meijers, Advocate-General to the Supreme Court of the Netherlands, was asked to issue its report in the light of the applicable provisions of the constitution and international law. The report's conclusions (enclosed for reference) were adopted by the Government, tightened up in some respects, and incorporated into a new version of the Bill. Parts of the explanatory memorandum to the Bill and of the memorandum prompted by the final report on the Bill are deemed to be inserted (both enclosed for reference).

The Bill now contains the following criteria for medical research in general. A recognized ethical committee must have given an approval. Such an approval can only be given if (a) the research protocol showed that the research will lead to the advancement of medical science, which could not be achieved without the participation of human subjects or with a less radical intervention; (b) the methodology of the research is to be of the requisite standard; (c) the research is to be performed under the supervision of persons possessing research expertise and (d) the risk to and burden for the subject will be in proportion to the potential value of the research.

Scientific research involving minors and incapacitated adults is prohibited. However, this ban does not apply to therapeutic research. This prohibition is furthermore not applicable to non-therapeutic medical research which can only be conducted with the involvement of subjects in the category to which the person in question belongs and only if there is negligible risk and minimum burden for the individual concerned. Research of this kind must of course conform to the general requirements referred to above.

Before a competent minor over the age of 12 may take part in medical research, the minor's own consent and that of his/her parents or legal guardian is required. Minors under the age of 12 and incapacitated minors over the same age may be involved in medical research only after written consent has been given by their parents or guardian. Medical research involving incapacitated adults requires the written consent of their legal representative or, in the absence of such a person, a person holding written authorization from the adult in question, or his/her spouse or partner.

Incapacitated persons who are to be involved in medical research shall be informed in a way they are able to understand. If a person who is incapable of giving informed consent objects to a procedure to which lie is subjected as part of the research, he will no longer be involved in it.

The Netherlands Government agrees with the Meijers Committee's conclusion, based on articles 31 and 32 of the Vienna Convention on the law of treaties, that medical research with incapacitated persons which satisfies all the above conditions need not be incompatible with article 7 of the ICCPR.

The Netherlands Government believes that it is in keeping with the object and purpose of the Covenant to allow, under strict conditions, non-therapeutic medical research which is of great importance to the advance of medical care for minors and incapacitated adults, such as persons with mental disabilities and persons suffering from senile dementia.

Article 8: Prohibition of slavery

37. Although slavery in the traditional sense of the word does not exist in the Netherlands, like many other countries the Netherlands faces the problem of trafficking in women, often in conjunction with enforced prostitution. During the discussion of the second Netherlands periodic report in

September 1988 a summary was given of the steps undertaken by the Netherlands to combat trafficking in women. A number of further points are made below.

38. The Act enforcing more stringently the ban on trafficking in women and minors of the male sex in Article 250 ter of the Criminal Code - in which the scope of the offence is expanded to include adults of the male sex, so that the offence is now referred to as trafficking in persons - entered into force on 1 January 1995. The Act may be summarized as follows:

- heavier penalties are introduced for trafficking in persons, the maximum penalty for this crime being six years' imprisonment and a fifth-category fine;
- should the victim be a minor, or should the crime have been committed by two or more persons acting in concert, a more severe penalty will be imposed;
- the Act itself contains a definition of the crime of trafficking in persons, to facilitate a clearer and better-targeted investigation and prosecution policy.

39. Severer penalties for illegal immigrant smuggling were introduced on 15 November 1996. The previous maximum sentence of one year's imprisonment was no longer regarded as realistic. An amendment to article 197a of the Criminal Code increased the maximum sentence from one to four years. Anyone committing this offence in the practice of his occupation is liable to six years' imprisonment. The penalty for anyone who makes a profession or a habit of illegal immigrant smuggling, or commits this offence in association with one or more persons is now eight years in prison.

Increasing the maximum sentence to four or more years' imprisonment makes it possible to impose pre-trial detention and other coercive measures under the Code of Criminal Procedure, which considerably increases the chances of conducting a successful investigation of the offence. Preparatory activities leading to illegal immigrant smuggling in association with other persons are also an offence under article 46 of the Criminal Code.

The distinction between the two offences must be borne in mind. Trafficking in persons involves forcing another person into prostitution by means of violence, threats, compulsion, abuse or deception. Smuggling illegal immigrants involves the illegal transportation of another person across a border for profit.

40. Guidelines for investigation of trafficking in women and for the prosecution of offenders have been drawn up by the committee of Procurators-General (the highest policy-making body of the Public Prosecutions Department). These guidelines state that if a prostitute is in a situation which is not equal to that in which prostitutes in the Netherlands who look after their own affairs operate, misuse of authority or influence derived from the actual state of affairs shall be assumed to have occurred. The mere discovery of a prostitute in such an exploitative situation gives rise to a reasonable suspicion that Article 250 ter of the Criminal Code has been contravened.

41. The guidelines are also intended to encourage the victims of trafficking in persons to report the crime to the authorities. To this end, the Aliens Circular was amended in 1988 (Government Gazette 1988, No. 174) and now victims who are residing illegally in the Netherlands and who report such a crime are not only eligible for medical and legal assistance, but may also be eligible for a residence permit. In any case they will be allowed to remain in the Netherlands during the investigation and the court hearing.

42. In 1989 and 1990 the National Criminal Intelligence Service started investigating cases involving trafficking in women. A number of these investigations have already led to convictions. The investigations are of an international nature and in at least one case investigating officers have visited the victims' country of origin. In subsequent years new investigations were initiated.

43. Information supplied by the National Criminal Intelligence Service indicates that the number of investigations into trafficking in women has increased. According to information from the Organization against Trafficking in Women, victims have become more willing to report the crime to the authorities.

44. A study published by the Ministry of Social Affairs and Employment in 1985 suggests that trafficking in women is occurring on a much larger scale than previously believed and that it generally occurs within international criminal organizations.

45. The Netherlands Government has also laid down a number of guidelines for the investigation of trafficking in women and the prosecution of offenders (Government Gazette 1989, No. 100). These guidelines aim to promote:

- the monitoring of sex clubs and brothels at local level and regular surveillance of an area by the same group of police officers (the visible and recognizable presence of police officers may increase victims' willingness to report offences);
- attention for the care and counselling of victims;
- the provision of relevant information by the local and regional Criminal Intelligence Services to the National Criminal Intelligence Service, partly in order
- to promote regional and international cooperation, if necessary.

46. In addition to these measures, other measures have been taken in the field of aliens policy. Aliens policy was adjusted in August 1988 with the amendment of the Aliens Circular.

Undertakings given by the State Secretary for Justice in talks on this matter with the Permanent Committee on Equal Rights Policy on 15 March 1989 (Parliamentary Papers 1988-1989, 20 800, Ch. XV, No. 76) have led to a more targeted policy. Enforcing authorities have been asked to pay particular attention to potential victims of trafficking as part of the general supervision of aliens.

47. The Ministry of Health, Welfare and Sport subsidizes the Hague-based Organization against Trafficking in Women. This organization provides women who have been victims of this crime with help, shelter and counselling. It does not have its own refuge, but works with a network of secret safe houses.

48. The indications as to the nature and scale of illegal immigrant smuggling are based on analyses of current investigations and information supplied by a group of asylum seekers up to and including July 1995. Using this information, the agencies concerned with immigration jointly proposed measures designed to prevent and detect the smuggling of illegal immigrants. The agencies in question, viz. the Immigration and Naturalization Service (IND), the Royal Netherlands Military Constabulary, the National Criminal Intelligence Division (CRI), and the national public prosecutor with responsibility in this field, also decided that this consultative forum would continue to exist under the name of the General Consultative Committee on Immigrant Smuggling to play a pivotal role in the fight against this type of crime. In addition to supervising the exchange of information, the Consultative Committee will focus on the coordination, formulation and implementation of various measures which can help in the fight against the smuggling of illegal immigrants. Officers from the Royal Military Constabulary and officials from the IND have been seconded to the CRI's Immigrant Smuggling Unit (UMS), which collects relevant information. A special team based at Schiphol Airport is studying how such smuggling works, and has produced valuable information. The team will continue its work and will, if possible, be expanded.

Article 9: Right to liberty and security of person

Paragraph 1

49. The following may be reported in connection with the addition to the guidelines introduced by the Human Rights Committee at the 39th session in 1990, which reads as follows: "When a State Party to the Covenant is also a party to the Optional Protocol, and if in the period under review in the report the Committee has issued views finding that *the State Party has violated provisions of the Covenant, the Report should include a section explaining what action has been taken relating to the communication concerned. In particular, the State Party should indicate what remedy it has afforded the author of the communication whose rights the Committee found to have been violated.*

50. On 23 July 1990, the Human Rights Committee forwarded, under Article 5, paragraph 4 of the Optional Protocol, its views in respect of communication No. 305/1988, submitted by H. van Alphen. The original basis for this communication was Mr van Alphen's grievance concerning the long period of time that had elapsed before compensation was granted in connection with the imposition of pre-trial detention. This grievance later focussed specifically on the question of whether the pre-trial detention was "arbitrary" within the meaning of Article 9, paragraph 1 of the Covenant.

51. The Human Rights Committee was of the opinion that the facts of the communication disclosed a violation of Article 9, paragraph 1 of the Covenant. It indicated that it would wish to receive information on any relevant measures taken by the State Party in respect of the Committee's views.

52. In May 1991 the Netherlands Government submitted a lengthy reply to the Human Rights Committee to the effect that it could not endorse the Human Rights Committee's view that a violation of Article 9, paragraph 1 of the Covenant had taken place, that the statutory regulations in force offered sufficient legal safeguards for continued compliance with the provisions of Article 9 in the future and that the Netherlands Government was willing, out of respect for the Human Rights Committee and taking all the circumstances into account, to grant the author of the communication an *ex gratia* payment of NLG 5,000.

53. With reference to the discussion of the second periodic report of the Netherlands on the reception of asylum seekers at Schiphol Airport, mention may be made of the Supreme Court's ruling of 9 December 1988, to the effect that the residence of asylum seekers in the "reception centre" at Schiphol-East terminal constituted deprivation of liberty within the meaning of Article 5, paragraph 1 of the European Convention on Human Rights and Fundamental Freedoms (corresponding to Article 9, paragraph 1 of the Covenant), which lacked any statutory basis. By Act of 19 January 1989 the Aliens Act was amended to include Section 7a which provides the necessary statutory basis for such detention. This amendment entered into force on 21 January 1989.

54. The Psychiatric Hospitals (Compulsory Admissions) Act entered into force on 17 January 1994, replacing the 1884 Mental Health Act and regulating matters including the legal position of psychiatric patients, the mentally handicapped and psycho geriatric patients after compulsory admission to psychiatric hospitals, mental institutions/special hospitals and nursing homes. The Mental Health Act was concerned only with the compulsory admission of psychiatric patients.

55. The new statutory regulations concern *inter alia* compulsory admission to psychiatric hospitals. In addition to regulating such admissions, they lay down the period of validity of the authorization and the rights of the patient admitted in this way. The Psychiatric Hospitals (Compulsory Admissions) Act regulates the patient's legal status both outside (admission, discharge and leave) and inside the hospital. Internal legal status relates to treatment plans, compulsory treatment, the use of drags and other measures in emergencies, checks on mail, restrictions on visits and telephone calls, restrictions on freedom of movement, the lodging of complaints, and the possibility of appeal. The provisions

governing internal legal status are new in comparison to the Mental Health Act, which applied solely to patient's external legal status.

56. A number of the clauses of this Bill are no more than a codification of *de facto* practice. For instance, it has repeatedly been emphasized in the case law that the person concerned must be given an actual opportunity to be heard in connection with any decision concerning compulsory admission to a psychiatric hospital, and that if the person concerned is not represented by legal counsel, the court must ask him if he wishes to receive legal assistance. A patient who received the assistance of counsel too late or not at all may claim compensation.

57. While the Mental Health Act was still in force, confidential advisors were increasingly being appointed to psychiatric hospitals (initially on an experimental basis). The Psychiatric Hospitals (Compulsory Admissions) Act provides a statutory basis for the presence of a confidential advisor to patients in psychiatric hospitals, which are obliged to ensure that patients may be assisted by such an advisor, whose responsibilities include mediating in complaint procedures (in the area of involuntary admissions, treatment - both medical and in a more general sense - and the deprivation of liberty), advising and informing the patient on his rights, and ensuring that lie knows when his case is coming before the courts.

58. Since 1 April 1995, it has been possible to impose pre-trial detention on habitual offenders accused of frequent property offences, such as shoplifting. Previously the police had no legal grounds on which to hold such habitual offenders after drawing up an official report. This situation was unsatisfactory, and troubled both the police and the victims.

On 1 April 1995, a new provision was incorporated in the Code of Criminal Procedure, whereby pre-trial detention may be imposed in respect of a number of specified property offences, such as theft, handling and culpable handling. The offences must have been committed within five years of the suspect having been convicted, by a final and conclusive judgment, of a similar offence, and there must be a risk that lie will commit such offences again.

These new provisions also make it possible to enforce detoxification on certain categories of addicts who repeatedly commit property offences, thus causing nuisance. In such cases, pre-trial detention is followed by a suspended sentence on condition the addict goes into a detoxification project.

Paragraph 3

59. The judgment of the European Court of Human Rights in the case of Brogan *vs.* the United Kingdom judgment of 29 November 1988, series A, vol. 145-b), ruling that a period of four days and six hours between arrest and either being brought before an examining magistrate or being released was not in accordance with the requirement of promptness with the meaning of Article 5, paragraph 3 of the European Convention on Human Rights and Fundamental Freedoms (corresponding to Article 9, paragraph 3 of the Covenant), led to a diversity of case law concerning the period of remand in police custody applicable here. As it was deemed undesirable that the Public Prosecutions Department should pursue a different policy at national level, the Committee of Procurators-General laid down a new policy line in March 1989 stipulating that a suspect must be brought before the examining magistrate no later than the third day of remand in police custody (i.e. within 3 x 24 hours after it has commenced). An amendment of the Code of Criminal Procedure to this effect entered into force on 1 October 1994. Article 59a of the Code now states that a suspect must be brought before an examining magistrate for questioning no more than three days and fifteen hours after his arrest.

Paragraph 5

60. It has now been established beyond all doubt by Supreme Court case law (Supreme Court judgment of 7 April 1989, Dutch Law Reports 1989, No. 532 and Supreme Court judgment of 6 October 1989, Dutch Law Reports 1989, No. 215) that neither the existence, nor the use of:

(a) the provisions of Articles 89-93 inclusive of the Code of Criminal Procedure concerning compensation as a result of wrongly imposed pre-trial detention or,

(b) the provisions of Section 42, subsection 2 of the Aliens Act concerning compensation in the case of the detention of an alien who claims that the State has unlawfully held him in pre-trial detention or unlawfully remanded him in police custody in connection with the admission of aliens can deprive a person of the right subsequently to seek full compensation before the civil courts on the basis of Article 1401 of the old Civil Code.

61. The Supreme Court based this judgment on the principle that in accordance with the provisions of Article 5, paragraph 5 of the European Convention on Human Rights and Fundamental Freedoms and Article 9, paragraph 5 of the International Covenant on Civil and Political Rights, anyone believing himself to be the victim of unlawful deprivation of liberty must be able to claim full compensation for the damage he has suffered as a result.

Article 10: Treatment of persons deprived of their liberty

Developments in legislation and policy

62. On 1 April 1988, an amendment to the Prisons Act came into effect. The most important change concerned the introduction of single judge courts to speed up the handling of prisoners' complaints. Under section 55 of the Prisons Act, judgment must be given on notices of appeal within 3 weeks.

63. In August 1995, the Penal Institutions Bill came before the Lower House of Parliament. Current legislation on prisons is out of date, and the new Bill is designed to replace the Prisons Act, the 1953 Prison Rules and numerous separate circulars. Existing statutory provisions are no longer appropriate when it comes to making a flexible response to the need for new regimes or changes in the prison population.

(a) The Bill is in line with the Government's objective of enacting a separate framework Act of Parliament for each of the three sectors - prisons, youth custodial institutions (see sections 74-77) and hospital order institutions (see sections 78-81) - which are responsible for the enforcement of sentences and non-punitive orders. The three framework Acts will be coordinated to a very large extent, so that complaints procedures and the rights and obligations of those detained will be regulated, where possible, in the same way. The Acts will also follow the same system and lay-out, as far as possible.

(b) The Penal Institutions Bill states that the objectives behind the execution of custodial sentences are to protect society and prepare detainees for their return to the community. The latter aim is served by phased detention and the regionalisation programme, i.e. detainees are in theory confined in institutions which are as close to their own homes as possible. Phased detention means giving a well-behaved detainee more freedom as his sentence draws to a close, and more scope to prepare for a return to the community, an example being daytime detention.

(c) The Bill defines the rights and obligations of detainees and indicates when the governor of the institution may infringe these rights. The governor may impose punishments or introduce measures in the interests of order. Inmates are obliged to obey, but may lodge objections afterwards, and, except in emergencies, must be informed and heard in advance.

(d) The Bill makes provision, under the heading of phased detention, for inmates to take part in what is called a "penal programme", which makes it possible for them to serve their sentence outside the penal institution itself. The inmates must comply with the conditions attached to the programme. The Probation and After-Care Board will play a significant role in developing, implementing and supervising the penal programme. Third parties - such as specialists in the care of addicts, mental health care or training for work programmes - may also be involved.

(e) Another element in the Bill is the proposal that a single institution may comprise more than one wing, each of which has a purpose of its own. This would increase the scope for more than one regime - for example with an open, a closed and a high-security wing within one institution. The Bill retains the rule that men and women should be separated, although it does provide for men and women to be housed in different wings of one institution, and thus to take part in the same activities. Differentiating institutions in terms of their purpose would make it possible for different categories of detainee (those who have and have not been convicted, men and women, young people, addicts, high-risk prisoners) to be held in institutions which differed as to regime and security level.

64. In February 1994, the Lower House adopted a policy document on "detention that works". A significant theme of the document is the differentiation of regimes referred to above, which is seen as a way of improving the supervision of specific categories of detainee. The policy document gives details of programmes for detainees who have psychiatric disorders, are addicts or those who are being encouraged to enter training for work programmes in preparation for paid employment after completing their sentence. The policy document's other proposals include raising the skill level of the work done by detainees and an increase in the number of hours they spend at work.

65. On 1 January 1987, the Act amending the regulations on suspended sentences and early release entered into effect (Bulletin of Acts and Decrees 1986, No. 593). Under this Act, detainees given a custodial sentence of at least one year are entitled to be released after two-thirds of the sentence has elapsed, without having to fulfil any particular conditions. Exceptions to this rule may be made only if special circumstances exist (e.g. in relation to the detainee's mental state or to serious offences committed by a detainee white serving a sentence). The rule governing sentences of six months to one year is the same, except that the date of early release is calculated differently.

66. With effect from 4 February 1994 Article 15a of the Criminal Code was amended as follows: the grounds for the postponement or cancellation of early release were extended to include cases in which the convicted person escapes or attempts to escape from detention after his sentence has begun.

Pardons

67. Under article 122 of the 1983 Constitution a pardon may be granted by Royal Decree, with due regard to regulations laid down by or pursuant to Act of Parliament. To put this principle into practice, the Pardons Act of 1 January 1988 was enacted. This Act was later replaced by the Pardons Act of 18 January 1996. This Act provides for a pardon to be granted:

(a) on the basis of any circumstance of which the court, at the time of judgment, failed or was unable to take account or sufficient account and which, had the court been aware or more fully aware of it at that time, would have led it to impose a different penalty or make different order, or to refrain from imposing a penalty or making an order; or

(b) if there are grounds for believing that the carrying out of the judgment or the continuation thereof cannot reasonably be expected to serve any purpose consistent with the enforcement of criminal law.

Cell capacity

68. Since 1985 extra attention has been devoted to expanding the capacity of custodial institutions. The emphasis was originally on increasing prison capacity; attention then shifted to the capacity for detaining people under hospital orders and the capacity of youth custodial institutions. In 1996, the prison system had a capacity of over 12,000 places.

69. The expansion in capacity will enable women serving long sentences to be placed in the most suitable type of institution (a variety of types thereby becoming available), shorten the waiting time between the beginning of detention under a hospital order and entry into a specially designated institution and, finally, reduce the number of juvenile offenders held in police cells.

70. Nine percent of the prison population share a cell, generally in semi-open and open penal establishments. When it comes to closed prisons, the Ministry of Justice operates on the basis of one detainee per cell. Only in emergencies - where someone accused of a very serious crime might have to be released - will two detainees be placed in a single cell in a remand centre, by way of a temporary exception. This is permitted only if it is impossible to transfer a suspect to another remand centre. In addition, the detainees in question must be suited to a shared cell and this emergency measure must be applied in remand centres, subject to the conditions listed, for no more than a few days.

Development of forms of detention

71. The number of forms of detention has been farther increased. Since 1989, experiments have been under way with "daytime detention" whereby a detainee approaching the end of a long sentence only remains in prison during the day, Monday to Friday, and follows an intensive programme to prepare him for his return to society. This is an attempt to reduce the socially isolating effect of a long custodial sentence. It is easier for detainees in programmes of this kind to make the transition to freedom than it is for those who finish their sentences in open prisons. Because of the encouraging results this has become established practice in the Netherlands.

(a) Alternative sanctions are proving a successful substitute for custodial sentences not exceeding six months, particularly in the case of young people. In 1995 over 4,000 alternative sanctions were imposed on young people (304 in 1983) and some 14,400 on adults (1,668 in 1983). Alternative sanctions require the consent of the accused person, and may comprise community service, a compulsory course, or a combination of the two. The maximum length of community service is 240 hours. The convicted person must complete the community service, like the compulsory course, in his free time, at weekends or in the holidays. He is thus able to remain in his own home and continue with school or work. Community service involves unpaid work for non-commercial bodies, such as hospitals, homes for the elderly, public works, city farms or nature conservation organisations.

Sanctions in the form of compulsory courses are aimed at improving the attitude and behaviour of the convicted person, in order to prevent him from re-offending. Examples are social skills training, information and training to promote a responsible attitude to sex and projects which explain the serious consequences that crime has for its victims.

As well as punishing offenders, alternative sanctions represent an opportunity, particularly for young people, to acquire knowledge, experience and social skills. Persons sentenced to alternative sanctions must comply with very strict conditions, and if they fail to do so once more after having received a warning, the alternative sanction is suspended and the court may, on the application of the Public Prosecutions Department, decide that a custodial sentence should be enforced.

(b) Electronic tagging is at present undergoing trials as an alternative to custodial sentences. The first year of the pilot project has generally fulfilled expectations and has been completed to the satisfaction of the parties involved. Tagging was employed in two ways during the pilot project: firstly, in combination with an alternative sanction (community service) as a substitute for a custodial sentence of between six and twelve months (without electronic tagging the maximum custodial sentence in lieu of which alternative sanctions can be imposed is six months); secondly as a stage in phased detention, a scheme whereby a detainee is allowed greater freedom towards the end of his sentence. Those who are subject to electronic tagging follow a compulsory programme of activities, some of them outside the home, such as work, training etc. The programme may also include one or more hours per week which detainees are free to spend as they please. The rest of the time must be spent at home. The time spent at home is checked by means of a transmitter attached to the offender's ankle which is electronically linked to a receiver situated in his home, which in turn is connected via a telephone line to the computer of a private security firm. Contraventions of the agreement made with the offender for which he may be held responsible result in an official warning or the suspension of electronic tagging and a return to a penal establishment.

The courts have now handed down a number of judgments imposing electronic tagging as a special condition. One offender, for example, was sentenced to 240 hours' community service and a suspended custodial sentence of six months, conditional on electronic tagging for four months, immediately following the period of community service.

(c) A successful experiment was conducted with mothers in detention, who were allowed to have their children (up to the age of 4) with them in a semi-open institution.

Maximum Security Prisons

72. In 1991, four high-security wings, each with 12 cells, were constructed for prisoners who pose a high risk of escape. However, the facilities for exercise, sport and visits were not in the high-security wings but in other wings, without such strict security precautions. A number of high-risk prisoners made escape attempts, mainly from the non high-security wings. At the end of 1992, some escape attempts involved the taking of hostages from the prison staff. It was therefore decided, in 1992, to build a High Security Prison containing 24 cells and all the necessary facilities within its walls. This prison will be used only if absolutely necessary. Pending its completion, a number of high-risk prisoners have been accommodated in a temporary High Security Prison since the summer of 1993.

Young offenders

73. The new juvenile criminal law entered into force on 1 September 1995, replacing the former custodial sentences (a term in a juvenile detention centre or light custodial punishment) with a single form of custodial sentence, juvenile detention. The old non-punitive orders for-special treatment and hospital orders have been replaced by a single non-punitive order, namely placing in a youth residential unit.

(a) In principle, juvenile criminal law applies to young people between the ages of 12 and 18, although age is not an automatic benchmark. The young offender's character and sense of responsibility are also taken into account. The courts may apply adult criminal law to young people between the ages of 16 and 18. The criteria on the basis of which this is possible have been extended under the amendments to the Criminal Code. Previously, two conditions, relating to the seriousness of the offence and the character of the offender, had to be fulfilled before general criminal law could be applied to juveniles. The circumstances under which the offence was committed are now also taken into account. Furthermore, each individual criterion may now provide grounds for adult criminal law to be applied.

(b) The courts may apply juvenile criminal law to persons aged between 18 and 21, on the basis of the personal characteristics of the offender or the circumstances in which the offence was committed. This allows the courts to pass similar sentences on a group of young people, some of whom are under the age of 18.

(c) The maximum custodial sentence for persons between the ages of 12 and 16 is twelve months, and 24 months for those between the ages of 16 and 18. If adult criminal law is applied to persons in the latter age group, the maximum custodial sentences are those which apply to adults.

(d) As stated above, the only form of non-punitive order which can now be imposed is placing in a youth residential unit. Strict criteria are applied. The order may be imposed for no more than four years. However, if the offence was a very serious one, and there is a risk that the offender will commit it again - and if the offender suffers from developmental problems or a pathological mental disturbance - the order may be extended by two years.

74. The status of juvenile detainees was altered by the entry into force of the Youth Services Act on 1 July 1989 and the Judicial Child Care Institutions (Regulations) Decree on 1 January 1990.

75. Institutions housing children under care orders are divided into care centres, detention centres, hostels, special treatment centres and intensive treatment centres. Each institution must have a set of regulations governing detainees' legal status. Juvenile detainees have the right to complain to a supervisory or complaints committee. They are also entitled to leave of absence, unless they have been placed in the institution under an order for remand in police custody or pre-trial detention, or are serving a custodial sentence. However, these individuals may also be granted leave under certain circumstances.

76. In addition to increasing the capacity of the youth custodial institutions, in 1995 a project group devised a plan to improve the quality of the institutions by tackling the following three areas: reorganising the youth custodial institutions sector and its use of the available capacity; improving the quality of its delivery of service and quality maintenance.

Work is under way on a central placement and selection system with the aim of placing young offenders in the most appropriate institution. To this end, information is required on the young person in question and on the nature and availability of institutions. To improve the delivery of service, emphasis will be placed on developing a programme of activities which will give young offenders the best possible chance of rehabilitation on their return to the community. A specially designed education programme is essential here. Lastly, to enhance the preventive role of youth custody institutions, attention will be focussed on the problem of addiction. A project group was established recently to develop a framework for a policy on addiction that was intended to lead to measures being taken by the institutions in 1996.

Hospital orders

77. On 19 November 1986 an Act of Parliament providing for a revision of the hospital order system came into effect. The Act improves the status of those detained under hospital orders; in other words, those who have been declared to be wholly or partly of unsound mind, and thus not legally responsible for the offence they committed, and in respect of whom the court has made a hospital order including care, perhaps in addition to passing a custodial sentence. For instance, two psychiatrists must now be consulted before the order can be issued, stricter criteria have been imposed for the issuing of such an order, more guarantees have been introduced into the procedure for one-year or two-year extensions of hospital orders (such as the right- to legal assistance and an obligation on the authorities to hear the individual in question) and appeal is now possible against decisions on the extension of hospital orders (including decisions not to extend them).

78. On 15 December 1993, the Hospital Orders (Supplementary Provisions) Act entered into force with a view to remedying a number of the problems that had arisen since the 1986 amendments. The Act mainly regulates the position of accused persons who refuse to assist in the drawing up of a report as required in connection with the making of a hospital order including care. Under the new provisions, it is sufficient, when applying to the court for a hospital order in respect of someone who refuses to cooperate with the examination required for a report, to submit another recommendation or report which deals in as much depth as possible with the desirability or necessity of such an order.

79. The Hospital Orders Framework Bill was introduced into the Lower House in October 1993 and is now before the Upper House. The existing rules governing hospital orders are out of date and spread over a number of statutory regulations. The aim of the Framework Bill is to replace, renew and concentrate these mules.

(a) The new Bill contains rules governing the execution of a hospital order and the legal status of hospital order patients. For example, it summarises the relevant fundamental rights and describes the circumstances in which restrictions on such rights may be possible, for example to protect society from the dangers posed by the patient or to protect the safety of persons or property. This also includes the maintenance of order and security in the institution and the protection of victims.

(b) In addition to listing the patients' rights, the Framework Bill defines the duty of care which rests on hospital order institutions. For example, they must provide for the medical, psychological and social care of patients and allow them to keep in touch with the outside world.

(c) The complaints procedures allow patients under hospital orders to challenge the lawfulness of infringements of their rights. The Bill enlarges the scope of the existing, somewhat limited, right to complain although it will not be possible to complain about the way in which an institution does or does not fulfil its duty of care. Each institution has a Supervisory Committee, of which the complaints committee forms a part. The Supervisory Committee is responsible for the general supervision of the treatment of patients, while the complaints committee deals with complaints in a more formal manner.

80. In June 1995 a Bill was introduced in the Lower House with the aim of allowing the courts to terminate orders for hospital care on certain conditions ranging from the patient's admission to a psychiatric clinic or continuation of treatment on an out-patient basis or the use of medication. The aim is to encourage the patient's gradual return to the community. The Bill also provides for improvements in the system of hospital orders with indications, a form of hospital order under which the patient is not placed in a custodial institution.

Psychiatric patients

81. There are 56 general psychiatric hospitals in the Netherlands. About 15% of patients are admitted under the Psychiatric Hospitals (Compulsory Admissions) Act 1992.

(a) Both under the 1884 Mental health Act as well as the Psychiatric Hospitals (Compulsory Admissions) Act 1992 there are two types of procedures for involuntary admission in psychiatric hospitals. The first is meant for emergency situations in which an order can be issued by the mayor of the patient's place of residence. Within three days of the detention order being made, the president of the district court decides whether the patient is to remain in detention. Under such an order, the patient can be held for 21 days. The second procedure is judicial authorization, which is issued by a court and is valid for 6 months, renewable for a year each time it expires.

(b) The 1884 Mental Health Act was replaced by the Psychiatric Hospitals (Compulsory Admissions) Act (1992, Bulletin of Acts and Decrees 669). The new Act provides for better safeguards for the rights of the individual in connection with judicial authorization, and the status of the patient is given more consideration. Compulsory admission under the new Act is only allowed if the individual poses a danger to society or to himself. Unlike the Mental Health Act, the Psychiatric Hospitals (Compulsory Admissions) Act regulates the legal status of patients while under compulsory admission. For instance, they must be heard by a court before entering the institution, and the court may order that counsel be appointed to advise patients. In principle, patients may only be given treatment after they have agreed to it (except where compulsory treatment is necessary). If patients are unable to express their wishes with regard to the proposed treatment, their spouses or close relatives should give their consent. If the patient opposes a previously agreed treatment plan, no treatment will be given (unless compulsory treatment is called for).

(c) In principle, enforced treatment is not permitted, unless it is necessary in order to prevent serious danger. As soon as this has been achieved, the enforced treatment must cease. The act gives strict criteria for other restrictions on the freedom of patients who have been committed and an opportunity to complain about such restrictions

(d) Each general psychiatric hospital has a confidential counsellor who helps patients exercise their rights.

Foreign prisoners

82. The Enforcement of Criminal Judgments (Transfer) Act entered into force on 10 September 1986. This Act provides for the implementation of various conventions which enable foreign nationals in detention in the Netherlands to complete their sentences in their own country and Dutch nationals detained abroad to complete their sentences in the Netherlands. Although neither the Act nor the conventions provide for an automatic right of transfer foreign detainees who are eligible are informed of the possibility by the governor of the institution where they are being held.

Aliens

83. As regards the status of detained aliens, the following developments should be noted:

- Following a Supreme Court decision of 16 January 1987 foreign detainees may, in principle, be eligible for transfer to an open prison. The Supreme Court regarded the fact that open prisons are intended to prepare prisoners for their return to Dutch society and that foreign detainees are generally expelled from the Netherlands after serving their sentence as insufficient grounds to exclude this group from open prisons. In the opinion of the Supreme Court, the detainee's character and circumstances must decide the matter, although planned expulsion must be regarded as part of those circumstances;
- Further to the discussion in the previous report on detainees' right to vote, it can be stated that, if an alien is entitled to vote, he will be given the opportunity of doing so during detention insofar as this is possible to arrange. The State Secretary for Justice sent a circular to governors of custodial institutions in 1989 in order to ensure that EU nationals who are entitled to vote can do so;
- Since 1 January 1991 funding has been available for the spiritual care of Muslims and Hindus. The services of an imam or pandit can be requested by any prisoner, any individual detained under a hospital order or any juvenile detainee.

Article 11: Prohibition of detention for inability to fulfill a contractual obligation

84. Reference should be made to the previous Kingdom report on this provision, p. 145, nos. 77-78.

Article 12: Right to leave one's country

Legislation

85. Article 2, paragraph 4 of the Constitution, which states that everyone shall have the right to leave the country, except in cases laid down by Act of Parliament, entered into force on 17 February 1988. The Act of September 1991 on regulations for granting travel documents (Passport Act), entered into force on 1 January 1992. The Passport Act is a Kingdom Act and is applicable throughout the Kingdom.

86. In Chapter 111 of the Passport Act the following grounds for refusal or invalidation of a travel document are listed:

Section 18

A travel document can be refused or declared invalid at the request of the Public Prosecutions Department if there are good reasons for suspecting that a person:

(a) who is suspected of having committed an offence for which a detention order has been issued, or

(b) who has been irrevocably sentenced to imprisonment or a deprivation of liberty of six months or more, or to a fine in the Netherlands of ten thousand guilders or more, or the equivalent in the Netherlands Antilles or Aruba, or

(c) who has not complied with the special conditions attached to a suspended sentence, a conditional hospital order or a conditional pardon, will avoid prosecution or exaction of sentence by ensuring that he is not within the territory of one of the countries of the Kingdom.

Section 19

A travel document can be refused or declared invalid at the request of an examining magistrate if the person in question has been declared bankrupt or if the provisions of section 106 of the Bankruptcy Act (Bulletin of Acts and Decrees 1893, No. 140) or an equivalent regulation in the Netherlands Antilles or Aruba apply.

Section 20

A travel document can be refused or declared invalid at the request of the Minister of the Interior if there is good reason to believe that the person concerned will evade military service or alternative military service by ensuring that he is not within the territory of the Kingdom.

Section 21

A travel document can be refused or declared invalid at the request of Our Minister whom it concerns if there is good reason to believe that a person who, in exceptional circumstances and pursuant to an Act of Parliament or country ordinance, has been prohibited from leaving the country will contravene this prohibition.

Section 22

A travel document can be refused or declared invalid at the request of Our Minister whom it concerns or of the municipal council, the provincial council, the council of a public body which has power to collect levies or charges, the Government of the Netherlands Antilles or Aruba or a body responsible for implementing social security legislation if there is good reason to believe that a person:

(a) who is neglecting his obligation to pay taxes or social security contributions owed in one of the countries of the Kingdom; or

(b) who is neglecting his obligation to repay loans, grants or interest-free advances provided by the Government; or

(c) who is neglecting his statutory obligation or obligation imposed by a court in the Kingdom to pay sums for which he is liable or costs made by the Government for which he is liable or money provided in the form of an advance or in any other way; or

(d) who is neglecting his statutory obligation or an obligation imposed by a court in the Kingdom to pay maintenance, will evade the statutory means of collecting the money owed by ensuring that he is not within the territory of one of the countries of the Kingdom.

Section 23

A travel document can be refused or declared invalid at the request of Our Minister whom it concerns if there is good reason to believe that the person concerned will engage in activities outside the Kingdom which are a threat to the security and other important interests of the Kingdom or of one or more countries of the Kingdom or to the security of friendly powers.

Section 24

A travel document can be refused or declared invalid at the request of Our Minister whom it concerns if:

(a) there is good reason to believe that the person in question will commit acts which under Dutch, Netherlands-Antillean or Aruban law constitute offences punishable under a treaty which is binding on the Kingdom and if he has been irrevocably sentenced in the last ten years, within the Kingdom or elsewhere, either for such acts or for being an accessory thereto;

(b) there is good reason to suspect that the person in question will commit an offence relating to travel documents and if he has been irrevocably sentenced in the last five years, within the Kingdom or elsewhere, either for such offences or for being an accessory thereto.

87. In the Passport Act the right of nationals of the Netherlands, refugees and stateless persons to a passport is established by law. The Act also governs cases in which other aliens are entitled to a passport. Finally, it defines which authorities are empowered to issue, refuse or withdraw passports, as well as the relevant procedures and time limits.

88. In 1988 an amendment to the Central and Local Government Personnel Act entered into force, which concerned obligations for public servants travelling to other countries for purposes other than work, with a view to preserving national security. Since these obligations concern private travel, they constitute a violation of the right to respect for private life. The Act provides a legal basis for this violation, obliging certain public servants to give notification of planned trips to certain countries and to report on their return.

Case law

89. Article 12 of the Covenant has been invoked several times in case law over the past few years. A number of examples are given below.

(a) Under the Caravan Act, an individual is only allowed to live in a caravan if he or she pursues a particular occupation or trade and, for the pursuit thereof, can be assumed to need to live in a caravans or if the person in question or his/her spouse, or a person who has had authority over him/her, has previously held a permit to live in a caravans

The appellant did not meet the requirements, but was nevertheless living in a caravans The Provincial Executive of Zeeland ordered the appellant to vacate the caravans under threat of a coercive measure. The appellant appealed against this order, and the Judicial Division of the Council of State was eventually asked to consider whether the actions of the Provincial Executive constituted a violation of the appellant's freedom, laid down in article 12, paragraph 1 of the Covenant, to choose his place of residence.

Referring to the objective of the Act - to regulate this form of dwelling in an orderly fashion, by means of a permit system, with a view to promoting the social welfare of caravan-dwellers - the Judicial Division of the Council of State pronounced that the order issued to the appellant to vacate his caravan could be regarded as necessary and consistent with the protection of public order. In the opinion of the Judicial Division, there was no evidence to suggest that an order for the appellant to vacate his caravan restricted his rights under article 12 of the Covenant (Judicial Division of the Council of State, 2 January 1986, Administrative and Judicial Decisions concerning Public Administration in the Netherlands 1986, No. 443).

On 25 February 1991 the European Commission of Human Rights declared the application inadmissible, noting: "The Commission is of the opinion that there has been no interference with the applicant's right to move and to take up residence (Article 2 of Protocol No. 4 of the Convention). The applicant is only restricted from living in a mobile home, but he is free to buy or rent a house wherever he wants in the Netherlands ".

(b) A decision given by the President of the Judicial Division of the Council of State on 9 November 1987 (Ten Berge/Stroink 1987, 177) also concerned a caravans However, in this case, the issue at stake was the extent to which the obligation placed upon the individuals involved to move their caravans to another site contravened the provisions of, *inter alia,* article 12 of the Covenant. The President of the Judicial Division round that the order to move the caravans had been issued because of the adoption of a new policy on caravan-dwellers, which aimed to create smaller caravan sites and close down the old large sites. The individuals concerned were still residing on an old site which had officially been closed.

The objective of the new policy is to promote the social welfare of caravan-dwellers. The President concluded that, in so far as there was a restriction of the right defined in article 12 of the Covenant, this restriction was justified by the underlying objective of the new policy.

(c) A Supreme Court judgment of 12 January 1988 (Dutch Law Reports 1989, No. 107) concerned an individual who had been convicted of repeatedly damaging the outer wall of the house where his ex-girlfriend lived. One of the conditions of the suspended sentence passed on the offender was that he should refrain from going to two streets in the town, including the street where his ex-girlfriend lived, for the duration of the operational period (2 years). The defendant lodged an appeal and, subsequently, an appeal in cassation, invoking article 12 of the Covenant. The Supreme Court gave the following ruling: *"Taking into account the fact that the condition only refers to the two streets specified, it imposes no other restriction on the appellant's freedom to choose his place of* *residence than that which the court obviously regarded as necessary - and could reasonably regard as necessary - to prevent further offences and protect the rights of others '.*

(d) A Central Appeals Tribunal decision of 26 April 1990 (Administrative and Judicial Decisions concerning Public Administration in the Netherlands 1990, No. 448) concerned a request from a constable 1st class of Drachten Municipal Police Force for exemption from his obligation to live in the place where he worked. The individual concerned wanted to live in a small village within a 10-kilometre radius of Drachten. This request was rejected by the burgomaster of Drachten, on the basis of the need for the individual concerned to be close at hand in the case of an emergency.

The Central Appeals Tribunal operates on the principle that an obligation to live near one's place of work does not contravene article 12 of the Covenant, provided that the area within which the employee is required to live has a functional bearing on the work. The right provided for under article 12 of the Covenant may thus be restricted if the performance of one's duties would otherwise be hampered, for instance, because of travelling time and the necessity to be available for work at short notice.

In this case the Central Appeals Tribunal found that there had been a violation of article 12 of the Covenant since it could not be established that the performance of the police officer's duties would be hampered to an unacceptable degree by the granting of an exemption.

Article 13: Prohibition of expulsion without legal guarantees

Aliens

90. The previous Kingdom report already referred to the need to amend important elements of the Aliens Act. This led to the drafting of a bill for a comprehensive review of the Aliens Act. The revised Act entered into force on 1 January 1994, with the exception of the part on legal remedies which entered into force two months later. Its main points are:

- streamlining the procedures, partly as a result of the entry into force of the General Administrative Law Act, which lays down how individuals can take action against government authorities;
- decision-making with regard to the admission of aliens takes place centrally at the Ministry of Justice;
- providing for more ways of shortening the procedures for asylum seekers who obviously have no entitlement to residence;
- concentrating the administration of justice in one court, namely The Hague District Court, with five auxiliary locations. Appeal is not permitted from abridged proceedings, although cassation is possible. In 1995, the government proposed a system of limited appeals in aliens cases. This would mean that appeal to a higher court was possible only in the main proceedings, i.e. the decision on admission in the proceedings on the merits. The appeal court would decide, within a certain time limit, what cases might go to appeal. No objection may be lodged against a refusal to allow a case to go to appeal.

Other relevant points in the revised Aliens Act and the Criminal Code are as follows:

- the concentration of jurisdiction in cases relating to aliens with the Aliens Division of the District Courts;
- criminal liability for those providing transport to the Netherlands for an alien who is not in the possession of identity papers;
- reasons for the peremptory denial of asylum requests, such reasons to be distinguished from grounds for inadmissibility or for determining that a request is manifestly unfounded.

Asylum

91. The increasing number of asylum seekers led in 1990 to additional measures, such as expediting the preparation of asylum seeker reception centres and concentrating the hearing of interlocutory injunctions at The Hague District Court.

92. Furthermore, several small changes had to be made in existing legislation, such as the creation of a statutory basis for Schiphol-East reception centre for asylum seekers whose applications have been refused (Section 7a of the Aliens Act). At the end of 1990, the government decided to replace the Schiphol-East centre by a new closed reception centre, known as the Border Hostel. Opened in south-east Amsterdam in April 1992, it provides better facilities (bedrooms and lounge areas, sports and recreation) and more places (120) than Schiphol East. The Border Hostel has an open regime. Asylum seekers may leave of their own free will, provided they leave the Netherlands. They may not enter the Netherlands (after all, they have been refused entry) unless the result of the proceedings or interim injunction proceedings is favourable.

93. At the same time, research was needed in order to find the best way to cope with the increasing number of asylum seekers. This resulted in the establishment, on 25 June 1990, of a committee, known (after its chairman) as the Mulder Committee, to look into asylum procedure and the reception of asylum seekers. Partly on the basis of the Committee's report, a new model for the admission and reception of asylum seekers was introduced on 1 January 1992. This new model was intended to ensure a fast and effective response to requests for admission, and the prompt expulsion from the country of persons whose requests had been denied, and for whom no further obstacle to deportation existed.

94. In December 1991 Sections 17a and 18a of the Aliens Act were introduced. These provisions make it possible - under certain conditions - to restrict asylum seekers' liberty to a varying degree, and to ensure that asylum seekers are available during the procedure with a view to possible deportation. The same amendment also expands the range of applicability of Section 7a, to include *inter alia* seaports.

95. With the influx since 1991 of large numbers of displaced persons from Iran, Iraq, Somalia and, in particular, former Yugoslavia, the number of applications for asylum rose sharply in 1993 to over 35,000 and indeed in 1994 to over 52,000 (compared with over 21,000 in 1990). By the end of November 1995 some 30,000 applications for asylum had been submitted.

This sharp increase in the flow of asylum seekers prompted amendments to the Aliens Act in 1994. Parliament agreed to a proposal to expedite procedures for asylum seekers from so-called "safe third countries" where there is generally no need to fear persecution. Parliament also approved a proposal to expedite procedures in respect of asylum seekers who come to the Netherlands via the territory of a safe third country.

Illegal immigration

96. The 1989 coalition agreement largely set the tone for measures to combat illegal immigration. The 1994 coalition agreement did not discuss this subject specifically, opting rather to continue existing policy. The policy formulated in 1989 comprises three elements: discouragement, tighter controls on illegal employment, and more effective deportation policy.

97. On 14 March 1990, the Zeevalking Committee (named after its chairman) was appointed, its mandate being to advise the Government on curbing illegal immigration, on the wrongful use of state benefit and on developing the active supervision of aliens.

In its final report (March 1991) the Committee advocated a broad approach to curbing illegal immigration. On the basis of this report, a start was made on restricting the availability of state provision for aliens residing illegally in the Netherlands. To this end, efforts are being made to set up an effective and efficient channel of information from the Aliens Police to bodies responsible for providing these facilities, whilst ensuring compliance with rules in the sphere of privacy. The problem of illegal employment has also been tackled.

98. The proposal to link aliens' residence status and entitlement to the facilities provided by the Netherlands, in order *inter alia* to exclude illegal immigrants from state provision, was given a legal basis in a Bill (the so called 'Koppelingswet"). Exceptions would be made for education, legal assistance and medical care.

99. A further step taken in 1991, jointly with the International Organisation for Migration (IOM), was the establishment of a migration office providing facilities for aliens willing to leave the country. This is an important instrument supplementing a humane and effective deportation policy. The migration programme is aimed at aliens who had initially hoped to settle in the Netherlands but were not granted a residence permit, and who now wish to leave the country whilst lacking the financial resources to do so. Under certain conditions, aliens may be eligible for migration grants.

Interpreters' complaints committee

100. At the end of 1995, the State Secretary for Justice set up an independent complaints committee for interpreters working for the Immigration and Naturalisation Service (IND), charged with hearing complaints about code of conduct breaches by interpreters, the quality of their work and the dedication they display. The complaints committee was established in response to a recommendation by the National Ombudsman, following his investigation of several interpreters in the pool on which the IND draws. The committee comprises an independent chair and three members drawn from the disciplines involved in assessing applicant interpreters, viz: the legal profession, the Dutch Refugee Council and an expert in translating and interpreting.

The committee deals with complaints submitted by persons directly involved in the admission of aliens and by the aliens themselves. Aliens are alerted to the possibility of lodging a complaint every time they are heard by the IND with the assistance of an interpreter. A complaint does not have the effect of suspending the admission procedure. The assessment of a complaint does not affect the substantive assessment of an application for admission.

Article 14: Entitlement to a fair and public hearing

Paragraph 1

101. The Netherlands Government would refer to the second periodic report which discusses in depth the requirements imposed by paragraph 1 of this article. It would also refer to pp. 22-40 (nos. 81 to 155) of the Core document, which examine the judiciary and Dutch procedural law in detail.

Military criminal law and disciplinary law

102. On 1 January 1991 a number of statutory regulations entered into force which brought to an end the 20-year operation to review the criminal law, criminal procedure and disciplinary procedures applicable to members of the armed forces.

103. Many amendments were made to substantive law. The death penalty was removed from the general section of the Military Criminal Code, bringing it into line with the revised Constitution of February 1983. This also led to amendments to the Criminal Law (Wartime) Act and the Criminal Law (Wartime Occupation) Decree. The revised regulations concerning failure to carry out orders are also significant. They contain explicit grounds for justification and exemption from criminal liability.

104. The so-called 'open standards' system, governing disciplinary offences, has been removed from the legislation. All such offences are defined. Both substantive and procedural provisions have been laid down to restrict the use of disciplinary procedures for offences which are not strictly speaking of a disciplinary nature - actually minor criminal offences.

105. The range of penalties available has been revised; open and closed arrest have been abolished.

106. The changes to procedural law for criminal cases are probably the most far-reaching. Separate military criminal courts, and therefore the court martial system and Supreme Military Court, have been abolished. Military personnel will now be tried by civilian courts. In principle, the general rules of civilian criminal procedure apply. However, a number of specific rules have been introduced. For instance, in appropriate cases the armed forces will send a representative to sit on Full Bench Divisions, both at district courts and at courts of appeal. This will ensure that military expertise is brought to bear on the case. The normal mules governing appeal apply. The Military Full Bench Division of the district court will also act as a court of appeal for disciplinary cases.

107. The Military Prosecutions Department has also been abolished. Its duties have been taken over by the public prosecutors at the district courts and courts of appeal.

108. The Military Criminal Law Act also contains provisions concerning military criminal procedure in the Netherlands Antilles and Aruba.

109. Provisions have been made for the establishment of mobile courts, which can operate in areas where war is being waged or a state of emergency has been declared.

Paragraph 2

110. Reference is made to the second periodic report of the Kingdom of the Netherlands.

Paragraph 3c

Legislation

111. A problem already discussed in relation to the second Kingdom report was the growing workload of the judiciary, which sometimes meant that proceedings could not be completed within a reasonable time. A number of measures aimed at remedying this situation have been mentioned.

112. In the period covered by the present report, a number of new measures have been introduced to continue to ensure that proceedings be completed not only with care but also within a reasonable time. These include broadening the range of cases dealt with by single-judge divisions. However, the possibility of referring the case to a full bench division is left open, should the complexity of the case so require. This administration of justice by a judge sitting alone occurs in proceedings both at first instance and in appeal.

113. By Act of 10 October 1988 the procedure whereby objections to a notification of further prosecution or to a notice of summons are submitted was amended. As a result of the amendment, the submission of a notice of objection no longer automatically invalidates the notice of summons *ipso jure*. Furthermore, objections have to be furnished with reasons. Substantial delays (which is often the purpose of submitting the objection) can thus be prevented, and the limited time available for court sessions is used more efficiently.

114. Another point worth mentioning is the amendment to the Judiciary (Organisation) Act by Act of 16 June 1988 (Section 101a), which allows the Supreme Court to pronounce judgment in an abridged form if the case at issue:

- cannot lead to an appeal in cassation; and
- does not necessitate the resolution of points of law in the interests of the uniform application of the law or its further development.

In such cases the Supreme Court is not obliged to furnish its ruling with reasons. This enables the Supreme Court to cope better with its growing workload.

115. Reference should also be made to the Traffic Regulations (Administrative Enforcement) Act of 3 July 1989 (the "Mulder Act"). This Act was introduced in phases: as from 1 September 1990 it entered into force in the district of Utrecht. It took effect at a later stage throughout the Netherlands. This Act applies to minor violations of traffic laws such as parking or minor speeding offences. It is not applicable in cases concerning personal injury or damage to property. Its purpose is to alleviate the workload of both the Public Prosecutions Department and the judiciary, whilst at the same time confronting offenders against certain traffic regulations more quickly with the consequence of their actions. On the grounds of this Act, standard fines are directly imposed by the police for the traffic offences concerned. If offenders object to the imposition of a fine, they may address their objection to the Public Prosecutor, and subsequently, if they so wish, appeal to the sub-district court. They must first pay the fine before appealing to the sub-district court. In the event that an appeal is successful, the amount paid will be reimbursed. If it is not, recovery or coercive measures may be used against the offender. The system of appeal in cassation from a sub-district court ruling will probably shortly be replaced by appeal to an appeal court.

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

116. It is common practice for Article 6, paragraph 1 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) to be invoked in combination with Article 14, paragraph 3c of the Covenant. As already noted in connection with the second Kingdom report, the question of whether a

"reasonable time" has been exceeded is dependant upon a variety of factors such as the complexity of the case, the suspect's behaviour during proceedings and the way in which the case has been dealt with by the competent authorities.

Central government makes adjustments, where necessary and possible, to tackle problems that arise in relation to a 'reasonable time' being exceeded.

Paragraph 3d

117. Reference should be made to the Core document, pp. 55-56, nos. 204-211, for information on the system of providing legal aid.

Paragraph 3e

118. The need to protect witnesses from intimidation resulting from their testimony is acknowledged in the Netherlands. Witnesses who feel threatened are allowed to remain anonymous. This may result in hearing witnesses only in the preliminary examination, prior to the public court hearing, if necessary without the accused, his counsel or the public prosecutor being present.

This legal practice, though sanctioned by case law, has attracted criticism from the point of view of the requirements to be met by fair legal proceedings, particularly in respect of an accused person's right to confront witnesses against him and to examine them or have them examined, as laid down in Article 6 of the ECHR and the relevant Article of the Covenant.

This criticism has led to an application being submitted against the Netherlands by bodies charged with the international monitoring of compliance with the ECHR. The European Court of Human Rights ruled on 20 November 1989 that using anonymous statements as conclusive proof in order to gain a conviction limits the rights of the defence in a manner that is incompatible with the safeguards enshrined in Article 6 of the ECHR.

Partly in order to comply with the requirements set by the European Court in respect of this case, and those since set by the Supreme Court in relation to anonymous testimony, a Bill on the protection of witnesses was introduced in the Lower House of Parliament on 9 January 1992, offering procedural safeguards against the abuse of anonymity.

In recent years, and most specifically in 1996, the European Commission on Human Rights ("the Commission") and the European Court of Human Rights ("the Court") have made rulings which open up the possibility of using anonymous witness statements in criminal proceedings. Notably, the supervisory bodies for the European Convention on Human Rights and Fundamental Freedoms ("the Convention") place great emphasis on the feelings and fears of the accused's victims or potential victims.

By way of illustrating this emphasis: in two applications submitted to it concerning the criminal proceedings against applicants charged with violent sexual offences, the Commission deemed it to be justified that the victims/witnesses were not questioned in open court in the presence of the accused. In its considerations, the Commission indicated that it had taken account of the special aspects of criminal prosecution in cases such as rape and other sexual offences. For victims, the Commission went on, proceedings of this kind are often an ordeal, particularly if the victim is confronted with the accused against his/her will. In assessing the question of whether an accused has had a fair trial in a situation of this kind, it is therefore necessary to take account of the victim's right to the protection of their private life. The Commission therefore considers it acceptable that in criminal proceedings involving cases of sexual abuse, measures are taken to protect the victim, always providing that these measures do not impede an adequate and effective exercise of the rights of the defence (Report in the case of Finkensieper vs. the Netherlands, 17 May 1995, and Baegen vs. the Netherlands, 20 October 1994).

The Court confirmed, in the case of Doorson vs. the Netherlands (26 March 1996) that the customary practice in the Netherlands, whereby both the interests of the defence and those of any victims who may be involved are taken into account, is justified. Although the case concerned did not involve victims of sexual violence but witnesses in a drugs case who feared reprisals, the Court endorsed the view that the principle of a fair trial included the need to weigh up the interests of the defence against those of persons who are either witnesses or victims, or both.

On the basis of the case law developed by the Commission and the Court, Dutch courts apply the following criteria when assessing the evidence in criminal proceedings, where this evidence consists of anonymous witness statements:

- In principle, the evidence must be given in the presence of the accused in open court, with the possibility of cross-examination. The accused must be able to comment on the witness statements and counter them in a way that may benefit his defence. This does not however mean that a witness statement, in order for it to be admissible as evidence, must always be made during the trial. In some cases this will be impossible or highly undesirable;
- The use of witness statements made during the proceedings prior to the trial is in itself not incompatible with the rights of the accused, as enshrined in article 6 of the Convention. The material that has been collected in the preliminary investigation may be used, provided that certain safeguards in the interests of the defence are in place;
- Article 6, paragraph 1 and paragraph 3d of the Convention require that every accused be given an adequate opportunity to examine the witness at some point and to contest the statements made by the witness as he sees fit. Of prime importance here is that he should be offered the possibility of doing this at some point during the proceedings, preferably at the moment at which the witness makes these statements. Neither the wording of article 6 of the Convention nor the case law dictates that the accused has the right in every case to a direct physical confrontation with a witness;
- This applies all the more forcefully when the life, the freedom and the safety of a witness are at stake. Member States have obligations in criminal proceedings not only in relation to an accused but also in relation to others, for instance within the meaning of article 8 of the Convention. This means that Member States must organise their criminal proceedings in such a way that witnesses are not exposed to danger unnecessarily. This implies that the principle of a fair trial includes the need to weigh up the interests of the defence against the interests of witnesses and victims;
- Where an anonymous witness is concerned, it is important for the court to establish the witness's reliability. In addition, a judge (in general the examining magistrate) must know the witness's identity. It may be of importance to the defence that the accused should know in what capacity the witness is acting.

Paragraph 3f

119. This obligation is regulated in Book II of the Code of Criminal Procedure.

Paragraph 3g

Case law

120. Under the 1980 Personnel Regulations of the Nederlandse Spoorwegen (Netherlands Railways), a public servant who has become aware of irregularities in connection with the service is obliged to make a true statement on the matter. In a ruling given by Breda District Court, the question was raised of whether this obligation is compatible with the right enshrined *inter alia* in Article 14, paragraph 3g of the Covenant, namely that a person has the right not to be compelled to testify against himself or to confess guilt. Inasmuch as the person concerned was obliged to report not only on irregularities but also on offences committed by himself, the court regarded the provision to be incompatible with the said article of the Covenant, and therefore not binding (Dutch Law Reports 1990, No. 489).

Paragraph 4

121. The review of juvenile law which led to new legislation in 1995 simplifies juvenile criminal law considerably and improves the way it links up with adult criminal law. The main elements of the new legislation are:

- adjustment of the law to take into account the increased ability of juveniles to speak and act independently;
- review of the system of custodial punishments and non-punitive orders, limited to confinement to a youth custodial institution (in the case of a punishment) and placement in a youth residential unit (in the case of a non-punitive order);
- extensive regulations for the application of alternative sanctions;
- a flexible transition from juvenile criminal law to adult criminal law by making it possible to apply adult criminal law in the case of persons aged 16-18 and juvenile law to persons aged 18-21;
- consolidation of the legal position of minors in the provisions of criminal law.

Paragraph 5

122. Reference may be made to the Core document, pp. 24-39, nos. 92-149.

123. The Netherlands entered the following reservation to paragraph 5: The Government of the Kingdom retains the statutory scope for the Supreme Court of the Netherlands (Supreme Court) to try at sole instance certain categories of persons accused of public office offences.

In general, it is possible in the Netherlands to lodge an appeal, or an appeal in cassation, to a higher court against any judgment. Only offences committed by a highly specific class of public servants in the exercise of their duties are tried at sole instance by the Supreme Court. Legal certainty, the need to guarantee which underlies the provisions of article 5, has been sought here in the doubling of the number of justices on the bench of the Supreme Court (ten rather than the customary five). In these cases the prosecution is in the hands of the procurator-general at the Supreme Court, who - unlike the other members of the Public Prosecutions Department - is appointed for life and is therefore independent of the government. The *forum privilegiatum* (i.e. a special court for holders of high public office) is regulated in article 119 of the Constitution, from which provision article 92 of the Judiciary (Organisation) Act derives.

124. See further the second periodic report of the Kingdom of the Netherlands, no. 108.

Paragraph 6

125. This obligation is regulated for the Netherlands under articles 89-93 of Book I, Title IV, second division A of the Code of Criminal Procedure.

Paragraph 7

126. This obligation is regulated by article 68 of the Criminal Code.

Case law

127. A Supreme Court judgment of 26 April 1988 (Netherlands Law Reports 1989, No.390) invoked Article 14, paragraph 7. In connection with false tax return forms, the Inspector of Taxes had imposed a retrospective assessment on the person concerned, the amount to be paid retrospectively being doubled as an administrative sanction. Criminal proceedings were then instituted against the individual, *inter alia* in relation to the false tax return forms already mentioned; this resulted in a one-month sentence suspended for two years, and a fine of NLG 10,000. The invocation of Article 14, paragraph 7 of the Covenant was unsuccessful. There was no question of the person having been tried or punished twice for the same offence. In explanation, the Court observed that the additional payment imposed by the Inspector of Taxes was of a purely provisional nature. If as had happened in the case at hand, criminal proceedings were subsequently instituted and a conviction resulted, the additional payment could be reclaimed.

Article 15: principle of nulla poena sine praevia lege poenali

128. Reference should be made to the previous Kingdom report on this provision, p. 148, nos. 109-110.

Article 16: Right to recognition as a person before the law

129. Reference should be made to the previous Kingdom report on this provision, p. 148, no. 111.

Article 17: Right to privacy

130. Article 13, paragraph 1 of the Constitution contains a provision concerning the protection of the confidentiality of correspondence, pursuant to which a violation of this confidentiality is permissible if legislation includes a provision to this effect, and a judicial order has been made on the basis of this latter provision. In connection with the exercise of the trustee's responsibilities as laid down in the Bankruptcy Act, the trustee should acquaint himself with the contents of letters and telegrams addressed to the bankrupt, which powers were given a statutory basis in an Act of 3 December 1987. On the basis of the Psychiatric Hospitals (Compulsory Admissions) Act, checks for enclosed objects on mail sent by or to patients on compulsory admission may only be conducted in the patient's presence.

131. In connection with the Data Protection Act, reference may be made to the previous Kingdom report. It may further be observed that this Act entered into force on 1 July 1989. The Police Files (Data Protection) Act entered into effect in part on 17 August 1990. The Police Files Decree to implement the Police Files (Data Protection) Act and the remaining provisions of the Police Files (Data Protection) Act entered into force on 17 February 1991.

Both the Data Protection Act and the Police Files (Data Protection) Act lay down rules on the storing of personal data and the protection of people's privacy (partly to implement Article 10 of the Constitution). A separate Act was felt to be necessary specifically for police files because the police often deal with data that constitute a special infringement of the privacy of the individual. Monitoring compliance with both Acts is the responsibility of the Data Protection Board.

132. On 1 April 1995, new regulations on the Criminal Intelligence Service (CID) came into force, governing the organisation and activities of criminal intelligence services and cooperation between them. This revision of the previous regulations, dating from 1986, was prompted by developments in areas such as the protection of privacy, in particular the attitude to personal data embodied in the Police Files (Data Protection) Act and the introduction of the 1993 Police Act.

133. On 1 February 1994, the Disclosure of Unusual Transactions Act came into force, implementing the recommendations of the Financial Action Task Force on money laundering of 30 May 1990 and Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering. The aim of the Act is twofold: to improve the information available to law enforcement agencies and to enhance the integrity of the financial services sector by making disclosure obligatory. The specific aim of the disclosure system embodied in the Act is to prevent the misuse of the financial system for the purpose of money laundering and to combat money laundering as such. The latter will take the form of analysing the data provided and comparing them with other data bases, thus revealing tacts that could be relevant to the investigation of offences and the prosecution of offenders.

It should be noted that the disclosure obligation is not the only instrument in the fight against money laundering. Equally important is the fact that the Criminal Code's provisions on handling have been extended in the interests of an effective campaign against money laundering. Mention should also be made of amendments to the Criminal Code, the Code of Criminal Procedure and other legislation designed to increase the scope for the application of orders for the deprivation of illegally obtained advantage and other property sanctions. The government would also point to the statutory provision for international cooperation in respect of deprivation of illegally obtained advantage. The disclosure obligation enshrined in the Disclosure of Unusual Transactions Act thus forms part of a series of measures, including preventive measures, such as the tightening up of identification obligations in relation to the provision of financial services, all of which are aimed at effectively tackling money laundering.

In order to ensure uniform application of this legislation and maximise understanding of the patterns of suspicions transactions, it was decided to establish a single central disclosures office, the organisation and management of which is the responsibility of the Minister of Justice. The decision to make the office independent of the police derived from the belief that it was undesirable from a constitutional point of view to compel private financial institutions to report suspicions conduct on the part of individuals directly to the police. The disclosures office serves as a buffer between the financial institutions on the one hand and the police and judicial authorities on the other. This ensures that the police are not granted direct access to data held by the disclosures office. Its register is a file within the meaning of the Police Files (Data Protection) Act and data contained in it may be released only with a view to the prevention and investigation of offences.

134. For the legislation concerning the use of force and body searches (for security reasons) in the course of police work, which - *inter alia* pursuant to Articles 10 and 11 of the Constitution - required a specific statutory basis as such actions are infringements of constitutional rights concerning respect for personal life and the inviolability of the person, reference may be made to paragraph 28 of this Report on the amendment of the Police Act in relation to Article 6. Pursuant to the Psychiatric Hospitals (Compulsory Admissions) Act, the clothing or persons of patients under compulsory admission may be searched on admission or while they are in hospital. Only dangerous objects may be removed.

135. Paragraph 115 of the second Kingdom report referred to the intention of the Netherlands to become a party to the Convention of 28 January 1981 for the protection of individuals with regard to

automatic processing of personal data, prepared by the Council of Europe. The Act implementing this Convention has since entered into force, on 11 July 1990.

136. The right to the protection of privacy in connection with the recording and dissemination of personal data as laid down in article 10, paragraph 2 of the Netherlands Constitution was discussed in depth in the second Kingdom report. Furthermore, mention should be made of the Basic Municipal Records Data Bank Act, which entered into force on 9 June 1994. The Act contains regulations on the following matters:

- the obligation of municipal authorities to keep a data bank containing personal data on inhabitants of the municipality;
- the obligation of the Minister of the Interior to ensure that a telecommunications system is available for sending and receiving messages concerning the population register between computers;
- entering and removing personal data from the files;
- the personal data which must be entered in the system;
- the source of these data;
- the obligation on members of the public to provide the municipal authorities with the required data;
- the rights of individuals with regard to personal data pertaining to them which have been entered in the system, including the right of access, and the right to have those data corrected;
- the provision of data to Government bodies, other bodies, and to the person registered, and restrictions in this regard;
- the rights of individuals related to the provision of data, including the right to know which of their personal data have been communicated to a third party; conditions on the use of the general file number; monitoring by the Data Inspection Board to ensure the protection of privacy.

137. At present, preparations are being made for the implementation of the Act under the Basic Municipal Records Data Bank Decree. Under this Decree, municipal authorities may set up basic data banks and, in certain cases, provide the information contained in them to Government bodies. The use of the file number will remain subject to restrictions while the Decree is in force.

138. On 1 June 1993 the Sensitive Data Decree entered into force. Its aim is to implement the provision in section 7 of the Data Protection Act calling for the inclusion of sensitive personal data in personal data files to be regulated. Data of this kind may not be stored in personal data files unless this is permitted under the Act or the Sensitive Data Decree. The Decree is designed to furnish an extra safeguard to protect the privacy of registered persons. The use and provision of sensitive data is governed by the general regime of the Data Protection Act. The sensitive nature of such data is a significant factor in the assessment process prescribed in the Act in relation to the use and provision of personal data.

Sensitive data may be defined as information concerning an individual's religions beliefs or philosophy of life, race, political persuasion, sexuality or intimate private life, data of a medical or psychological nature, or data relating to the criminal or disciplinary law. Their sensitivity stems from the information itself. In certain circumstances, data which do not yield information of this nature but which, if recorded, could do so could also be defined as personal data of a sensitive nature. If registered, such data could under certain circumstances become sensitive. For example, apparently neutral particulars such as nationality and place of birth should be defined as sensitive if they are registered solely or principally with a view to determining a person's ethnic background.

139. Another case may be reported in connection with the addition to the guidelines introduced by the Human Rights Committee at the 39th session in 1990, which reads as follows: "When *a State Party to the Covenant is also a party to the Optional Protocol, and if in the period under review in the report the Committee has issued views finding that the State Party has violated provisions of the Covenant, the Report should include a section explaining what action has been taken relating to the communication concerned. In particular, the State Party should indicate what remedy it has afforded the author of the communication whose rights the Committee round to have been violated"*.

On 31 October 1994, the Human Rights Committee forwarded its views under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, in respect of communication no. 453/1991, submitted by A.R. Coeriel and M.A.R. Aurik. The authors claimed that the refusal of the Dutch authorities to allow them to change their current surnames prevented them from furthering their studies for the Hindu priesthood and therefore violated article 18 of the Covenant, concerning freedom of religion. They also claimed that the said refusal constituted unlawful or arbitrary interference with their privacy, as referred to in article 17 of the Covenant.

After having declared inadmissible the part of the communication relating to article 18, the Human Rights Committee expressed the view that the facts before it disclosed a violation of article 17 of the Covenant. The Committee indicated that it would wish to receive information on any relevant measures taken by the Netherlands in respect of the Committee's views.

On 10 March 1995 the Government of the Netherlands submitted its reply to the Human Rights Committee, to the effect that Dutch legislation and policy on the changing of names offered sufficient guarantees to prevent future violations of article 17 of the Covenant in this field and that, out of respect for the Committee's opinion, the Government has decided to grant permission to the authors to change their names in accordance with their applications without any further costs.

Article 18: Freedom of religion and belief

140. The following comments may be made with regard to the freedom of religion and belief, which is also provided for by article 6 of the Netherlands Constitution.

141. The Hirsch Ballin Committee, which was set up to examine the criteria for support to churches and other religions or philosophically-based organisations, reported in March 1988. An important element of the report was related to Government policy on spiritual care in the armed forces, prisons, youth institutions, health care institutions and homes for the elderly.

142. On the basis of this report, the Government concluded that freedom of religion and belief means that people who find themselves - often involuntarily - in the aforementioned categories of institution and people serving in the armed forces have a right of access to spiritual care from a representative of the religion or belief of their choice. The authorities themselves should provide for such care, as they have done by engaging the services of spiritual counsellors from various religions and philosophical movements. A structured system already exists for individuals in the armed services and prisons who adhere to the traditional Dutch beliefs of Christianity and humanism. The Government intends to set up two spiritual counselling services for Muslims and Hindus, as soon as they appoint a representative.

143. A judgement given by the Amsterdam Court of Appeal on 25 June 1987 (Administrative and Judicial Decisions concerning Public Administration in the Netherlands 87, 411) had a bearing on the horizontal effects of fundamental rights, and conflicts between them. The case revolved around the question of whether a private school has the right to expel pupils who fail to attend swimming lessons because of their religions beliefs. This concerns article 18 of the Covenant. The court found that under article 18, paragraph 3, freedom to manifest religions beliefs is subject to such limitations as are prescribed by law and are necessary in order to protect the fundamental rights and freedoms of others.

The school in question invoked its constitutionally guaranteed freedom to organise teaching as it saw fit, which was upheld by the court, since no evidence could be found to suggest that the school had abused that freedom.

144. The Judicial Division of the Council of State addressed the following question: an institution with representatives of various religions and ideologies receives a grant from the state. Is it unlawful to exclude from this grant a Protestant organisation for social work which is not affiliated to the institution in question? The Division answered the question in the negative, on the basis of the following consideration: *'That the* right *to freedom of religion, as enshrined in Article 6 of the Constitution, Article 9 of the European Convention on Human Rights and Article 18 of the Covenant may not be interpreted so broadly as to imply the right to state-funding for social activities based on particular religions or ideological beliefs. This right primarily concerns the freedom of each individual to practise his/her religion or to have and to propagate a philosophy of life without the interference of the state. This right does not, therefore, give rise to financial claims on the state'* (Administrative Law Decisions 1987, No. 287).

145. On 2 February 1990 the Supreme Court ruled that Article 6, paragraph 1 of the Constitution, Article 9, paragraph 2 of the European Convention on Human Rights and Article 18, paragraph 3 of the Covenant on the freedom to manifest one's religion admit certain limitations. The case in question concerned passages in an evangelical periodical published by the plaintiff referring to homosexuality and AIDS in a manner that was insulting, unnecessarily offensive and invited discrimination. The protection afforded by Article 1401 of the old Civil Code against utterances judged to be unlawful must be counted among these admissible limitations.

Article 19: Freedom of expression

Legislation

146. Paragraphs 129, 130 and 131 of the second Kingdom report gave information on the Media Act, which replaced the Receiving Licences Act, the Press Act and the 1968 Broadcasting Act.

147. The Media Act (Bulletin of Acts and Decrees 1987, No. 249) entered into force in 1988. It contains regulations concerning the provision and distribution of radio and television programmes and the provision of support to the press.

The Media Act aims to:

- safeguard freedom of expression, freedom to receive information and the diversity of expression by broadcasters and the press, in order, *inter alia,* to preserve the democratic nature of the Dutch system of government;
- ensure that Dutch cultural traditions are protected and offering improved opportunities for distributing Dutch cultural products, particularly by radio and television;
- guarantee that a public radio and television service is provided, which means that programmes are transmitted on a non-commercial basis for both a wide audience and minority groups. Each broadcasting organisation is therefore obliged to provide a full range of programmes consisting of information, education, culture and entertainment.

The four principles underlying the Media Act are openness, pluralism, non-commercialism and cooperation. The Act provides for freedom of expression in so far as this is consonant with the responsible use of the media. Cooperation in broadcasting is intended to provide a broad base which will make possible a joint responsibility for the use of the media and ensure that the media operate efficiently. Openness is afforded by the admission of new broadcasting organisations, provided that they fulfil certain criteria governing their objectives, format and membership. Admission to the broadcasting system is facilitated by the provision on prospective broadcasting organisations, which have to fulfil the same criteria in respect of their format and objectives, but do not have to have so many members.

Evidence of the system's openness is also round in the opportunities provided for broadcasting time to be allocated to churches, religions and philosophically-based organisations and political parties. Other small bodies and organisations are reliant on the NOS (Netherlands Broadcasting Corporation) Programme Foundation. This Foundation is designed to prevent the fragmentation of broadcasting time and broadcasting organisations.

The Media Act also provides for open administration in that broadcasting cooperation is embodied in an umbrella organisation, the NOS Programme Foundation, which draws support from various cultural and other sectors of society as well as from broadcasting. This broad support base is reflected in the composition of its administrative body. An unusual and important aspect of this cooperation is the fact that the NOS Programme Foundation broadcasts broadly-based joint programmes on both radio and television, with contributions from a number of organisations.

The following recent developments in commercial broadcasting should be noted:

(a) In May 1990, the Netherlands Government submitted to the Lower House of Parliament a bill proposing that the Media Act be amended. It proposed that scope be created for national commercial broadcasting organisations to be set up. Parliament opted for a system whereby legal persons which met certain formal requirements for commercial broadcasting organisations would be granted permission to provide programmes and have them transmitted through the cable network, to which over 80% of Dutch households are connected. The restriction of commercial broadcasting to distribution by cable is a result of the shortage of air frequencies available; it was decided to continue using the existing airwave network for the public broadcasting service, in view of the special responsibilities of the broadcasting organisations which provide this service.

(b) The bill also contained provisions concerning access for broadcasting organisations based abroad. The bill proposed a system whereby foreign programmes could be distributed freely on the Dutch cable network, provided they do not circumvent Dutch media legislation. This would remove all obstacles to the transmission of foreign programmes by cable.

Paragraph 3 of article 7 of the Constitution guarantees the freedom to publish thoughts and opinions by means other than those referred to in the first two paragraphs of article 7, such as on sound recordings and videotapes. No one may be required to obtain prior approval of thoughts and opinions before making them public. Restrictions on this right may only be imposed by Act of Parliament. The last sentence of paragraph 3 makes an exception for performances open to persons under 16 for the purpose of protecting good morals. This implies *inter alia* that films for persons over the age of 16 may not be subject to compulsory censorship.

The Media Act states that films which, under the Film Censorship (Young People) Act, are not suitable for persons under the age of twelve or sixteen, may not be transmitted on television before 20.00 and 21.00 hours respectively.

Case law

148. On 23 October 1987 (Rechtspraak van de Week, 1987, No. 191), in the dispute between the NOS (Netherlands Broadcasting Corporation) and the KNVB (Royal Netherlands Football Association) concerning the recording and subsequent broadcasting on radio and/or television of football matches organised by the KNVB solely when the KNVB had given its permission for such and received a fee, the Supreme Court ruled as follows: *"The fact that the KNVB withholds*

information from the NOS, whether or not this information is available only after payment of a fee, is not a breach of the right to gather news enshrined inter alia in Article 19 of the Covenant'.

149. On 11 July 1991, the European Commission of Human Rights declared the application of the NOS to be inadmissible. In so deciding, the Commission noted: *"that the football matches referred to in the present case are organised by a private organisation. Admission is subject to conditions under private law. The question arises, however, whether the respondent Government was obliged under Article 10 of the European Convention* (corresponding to Article 19 of the Covenant) *to ensure a right to free reporting of these matches by radio and television.*

> *The financing of football matches normally consists, to a large extent, of fees paid by the general public attending the match. Another important source of financing is, in many European countries, money paid by the television and radio in order to obtain the light to direct reporting of the match.*
>
> *In these circumstances, it cannot be considered an interference with the right to freedom of expression as guaranteed by Article 10 of the Convention if the organiser of a match limits the right to direct reporting of the match to those with whom the organiser has concluded agreements on the conditions for such reporting ".*

150. A final point meriting attention is the application submitted by a person held in pre-trial detention in Amsterdam, who was not allowed to give an interview to newspaper journalists. The Director of the Remand Centre had justified this by citing a regulation originating from the State Secretary for Justice concerning contacts between detainees and the press, on the grounds of which it is not permissible for a person held in pre-trial detention to be interviewed by the press in relation to a criminal case against him that is still *sub judice*. The Appeals committee decided that there was no question of any incompatibility with freedom of speech, as the person concerned was free to communicate with the outside world, including the press, in various other ways. The nature of pre-trial detention is, however, such as to preclude interviews with reporters or press conferences (NJCM Bulletin 1989, p. 556 ff.).

Article 20: Prohibition of war propaganda

Paragraph 1

151. With regard to paragraph 1, reference should be made to the preliminary report of the Netherlands on this provision. The Netherlands government is still of the opinion that the qualification made when the Covenant was ratified should remain in force. For the arguments in support of this position, reference is made to the verbal observations that accompanied the second Kingdom report.

Paragraph 2

152. In recent years there have been a number of developments both in case law and in legislation concerning the fight against racial discrimination. Reference may be made in this regard to the 12th report on Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination in which these developments are dealt with.

It should be noted that the only restrictions on demonstrations permitted under the Constitution are to protect health, in the interest of traffic and to combat or prevent disorders. Article 7, paragraph 3 of the Constitution, which covers demonstrations as a separate means of dissemination of opinion, prohibits prior approval on grounds of content. One option open (under the law of criminal procedure) is to arrest people during a demonstration for expressing racist views.

Article 21: Right of assembly

153. The right of assembly and demonstration is enshrined in article 9 of the Constitution, which states:

"1. The right of assembly and demonstration shall be recognised, without prejudice to the responsibility of everyone under the law;

2. Rules to protect health, in the interests of traffic and to combat or prevent disorders may be laid down by Act of Parliament."

The Public Assemblies Act implements paragraph 2 of the above article (right of assembly). The Act confers powers on municipal authorities to curb the right of assembly and demonstration, albeit of course within the limits laid down in the Constitution. These limits are spelled out again in section 2 of the Act: 'Restrictions may be imposed solely to protect public health, in the interests of traffic and to combat or prevent disorders."

The Public Assemblies Act draws a distinction between assemblies and demonstrations which are held in public places and those which are held elsewhere. A public place is defined as a place where, in principle, everyone is free to come and go, and which has no specific purpose. Examples therefore include public thoroughfares and marketplaces (including covered markets), but not stations, museums, churches, football grounds, halls or restaurants.

The powers conferred by the Act in respect of assemblies and demonstrations which are held in public places are more extensive than those referring to assemblies and demonstrations held in non-public places. In the first case, the municipal council may introduce a notification system by passing a bylaw. On receiving notification from the relevant organisations, the burgomaster may thus ban a planned assembly in advance, if to do so would be in the interests of public health, traffic or the prevention of disorders.

However, the Act does not entitle local authorities to introduce a notification system in respect of public assemblies which are held in non-public places. In such cases, therefore, there can be no question of preventive action, such as the prior imposition of restrictions or bans on assemblies of this kind. Such an assembly may be stopped, while it is taking place, by or on behalf of the burgomaster, to protect public health or to prevent or combat disorders (but not in the interests of traffic). In other words, the Public Assemblies Act allows the authorities to take repressive action only in respect of assemblies which are open to all but which are being held in non-public places.
In 1995, when the Kurdish parliament was established in the Netherlands, the Dutch authorities took no measures under these statutory provisions, as the assembly in question was being held in a non-public place and the organisers were not obliged to report it. Nor was there any reason to take action during the assembly, as there were no public order problems.

154. The second Kingdom report examined the Bill regulating the exercise of the freedom of religion and belief other than in buildings and enclosed places and of the right of assembly and demonstration, which was pending in the Lower House of Parliament. See II.G, paragraphs 139 to 141. The Bill was approved by Parliament and entered into force on 27 April 1988 (Bulletin of Acts and Decrees 1988, No. 157).

155. In a judgement of 9 June 1987 (Interlocutory Injunction 1987, No. 268), the president of The Hague District Court acknowledged the horizontal effect of the right of assembly. The case in question concerned an organisation, the Netherlands South-African Society, which had wanted to hire a room at The Hague Conference Centre to celebrate the Day of the Covenant. The Conference Centre had refused them permission, releasing *inter alia* to the organisation's objectives and to its own

commercial interests. The president ruled that the refusal constituted an unwarranted violation of the right of assembly, a right accruing to all citizens, whether or not they hold controversial views. Although the president's decision itself infringed upon the freedom of contract, the president held that this latter freedom must give way to the protection of the organisation's constitutional rights.

Article 22: Freedom of association

156. As mentioned in the second periodic report, freedom of association is guaranteed under article 8 of the Constitution. Furthermore, the Netherlands ratified ILO Convention 87 (Freedom of Association and Protection of the Right to Organise) in 1950, while ILO Convention 151 (Protection of the Right to Organise and Procedures for determining Conditions of Employment in the Public Service) entered into force for the Netherlands on 29 November 1988. The guarantees provided for under ILO Convention 151 are laid down in the Central and Local Government Personnel Act and the Military Personnel Act 1937 and the decrees based thereon.

157. By Act of 17 March 1988 (Bulletin of Acts and Decrees 1988, No. 104) an amendment was introduced to Articles 15 and 16 of Book II of the old Civil Code. Under the old regulation, the courts had the power to dissolve a legal person judged to be unlawful, if the public prosecutions department had so ordered. The legal consequences ensuing from a judicial decision of this kind therefore consisted solely of dissolution; no legal consequence were attached as such to the court's finding that the legal person was unlawful. The decision was not binding on either the criminal courts or, in the case of political parties, the Electoral Council.

This situation was felt to be unsatisfactory. A solution was sought in an amendment obliging the courts, when so ordered by the public prosecutions department, to explicitly declare unlawful a legal person whose functioning contravenes public order, and subsequently to dissolve it.

Article 23: Protection of family

158. The following Acts concerning protection of the family came into effect during the reporting period. Furthermore the Netherlands have ratified a number of international conventions in the field of the law of persons and family law:

- The Act of 3 July 1989 (Bulletin of Acts and Decrees No. 287), approving the Agreement on the law applicable to family names and given names, signed in Munich on 5 September 1980 (Treaty Series 1981, No. 72), and the Agreement on the issuing of certificates concerning the bearing of different family names, signed in The Hague on 8 September 1982 (Treaty Series 1982, No. 169), entered into force on 4 July 1989.
- The Act of 8 December 1988 (Bulletin of Acts and Decrees, No. 566), containing regulations on the fostering of foreign children with a view to adoption, entered into force on 15 July 1989.
- The Kingdom Act of 7 September 1989 (Bulletin of Acts and Decrees, No. 391), approving the Convention on Celebration and Recognition of the Validity of Marriages, signed in The Hague on 14 March 1978 (Treaty Series 1987, No. 137), entered into force on 28 September 1989.
- The Act of 3 July 1989 (Bulletin of Acts and Decrees, No. 288), containing regulations on conflict of laws relating to family names and given names, entered into force on 1 January 1990, partly in connection with the ratification of the Munich Agreement of 5 September 1980 on the law applicable to family names and given names (Treaty Series 1981, No. 72).
- The Act of 7 September 1989 (Bulletin of Acts and Decrees, No. 392), containing regulations on the conflict of laws relating to marriage, entered into force on 1 January

1990, in connection with the ratification of the Hague Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages.

- The Act of 7 June 1990 (Bulletin of Acts and Decrees, No. 302), amending Title 4 of Book 1 of the Netherlands Civil Code. This Act provides for further regulations governing the registration of birth, marriage and death certificates issued by a competent body outside the Netherlands in accordance with local regulations in the register of births, marriages and deaths in The Hague (art. 20a, Book 1 of the Civil Code). Registration is open to individuals who, at the time of the request to be registered, are Dutch nationals or have at any time been Dutch nationals or Dutch subjects and to individuals who have been admitted to the Netherlands as refugees under the Convention of 28 July 1951 concerning the status of refugees.
- The Act of 13 September 1990 (Bulletin of Acts and Decrees 1990, No. 482), containing further regulations governing access to children in connection with divorce entered into force on 1 December 1990. The Act strengthens the legal basis on which parents who are not appointed guardians in a divorce settlement are allowed access to their child(ren). In such matters, a great deal of consideration is given to the position and the interests of the child. Minors of twelve years and older have now been given the right to initiate proceedings to establish or alter access arrangements if the legal representative or the parent who has not been appointed guardian fails to take steps to do so.

Policy concerning living arrangements

159. In the context of the International Year of the Family in 1994 the following working definition of a family was used in the Netherlands (and has been broadly accepted): *"A family is any living arrangement in which children are cared for and/or brought up'.* The term "family" is generally used in a wider sense. The term "living arrangement" is used instead of 'family' to indicate the variety of forms in which people can live together.

The Netherlands Government has no specific policy on families as such. Nevertheless, families and living arrangements are affected in practice by policy pursued in various contexts including legislation, subsidy schemes and aspects of the social security system. Every effort is made in legislation to ensure equal treatment for the different living arrangements.

Partner registration

160. Shortly before Christmas 1996, the Lower House of Parliament passed a Bill for the introduction of partner registration. In brief, this allows persons who are unable or unwilling to marry to be entered as partners in the municipal register of births, deaths and marriages. The legal consequences attached to such registration are virtually the same as those attached to marriage (with the exception of those relating to children). The conditions under which registration can be undertaken or terminated are also virtually identical to those applying to marriage, including for example provisions on maintenance and pension entitlements.

Surrogate motherhood

161. The phenomenon of surrogate motherhood, whereby a woman allows a foetus to develop in her womb with the intention of giving birth to a child for someone else, and has made agreements with the person(s) concerned to this effect, is deemed undesirable by the Netherlands Government. Too many risks are attached to such births, particularly with regard to the child and its development. An agreement concluded between a surrogate mother and someone desiring to parent the child should therefore be regarded as void, in the Government's opinion.

162. In the light of this, several additional provisions to the Criminal Code to curb commercial surrogate motherhood have been made. On the grounds of these provisions, it is a criminal offence to offer professional or commercial mediation in relation to surrogate motherhood or to publicise either the availability of a surrogate mother or the desire to procure one.

163. Donation of an ovum in combination with surrogate motherhood is prohibited in the Netherlands, under a regulation governing in vitro fertilisation based on the Hospitals Act.

Paragraph 4

164. The amended Act containing further regulations on parental responsibility for and access to minor children entered into force on 2 November 1995. The Act states that, after a marriage has come to an end - through divorce, a judicial separation or dissolution of the marriage following such a separation - parents may continue to exercise joint responsibility as they did during the marriage. To this end, the two parents must submit a unanimous application to the court. If such an application is not made, or if it is refused, the court determines which of the parents is to have parental responsibility.

Parents who are not and have never been married to each other may also exercise parental responsibility. They may submit a joint request for joint responsibility to be entered in the relevant sub-district court register. In this case, a number of conditions have to be fulfilled. For example, both parents must have reached the age of majority, the father must have acknowledged the child and both parents must be capable of exercising responsibility.

If joint responsibility is terminated, the court awards responsibility to one of the parents. The register entry on joint responsibility is deleted. If, at some later date, the parents again wish to exercise joint responsibility, a decision by the court is required.

The Act expanded provision for parental access. Access arrangements are no longer restricted to cases of divorce, but now apply in all situations where a parent does not have responsibility for a child, for example cases where one or both parents have been divested of parental responsibility or if they have been declared incapable of exercising it. Access arrangements can also be laid down for persons other than parents who have close personal ties with the child, for example, grandparents, brothers and sisters, former foster-parents or the child's biological father. An access arrangement can be refused if it is not in the interests of the child.

The Act also provides for entitlement to information and consultation. A parent with sole responsibility is obliged to provide the other parent, who does not have responsibility, with information concerning important matters that affect the child. The parent who does not have responsibility is also entitled to be consulted by the parent who does on important matters affecting the child. These include educational issues - the choice of school, the child's performance at school, the choice of occupation - and medical and social matters. If necessary, consultation may take place through the intermediary of a third party. The court may make an arrangement at the request of one of the parents, provided this is in the interests of the child.

Article 24: Protection of the child

Paragraph 1

Child abuse

165. The 15 centres for medical counselling in cases of child abuse have been decentralised and are now administered by the provincial authorities. They are no longer subsidised by the Ministry of

Health, Welfare and Sport. Individuals can report suspected cases of physical, psychological or sexual abuse of children to these centres.

The centres employ medical staff, social workers and administrative staff and their task is to verify whether abuse has actually taken place. Once this fact has been established care organisations and/or the judicial authorities are contacted. The annual report issued by the national organisation which monitors the centres indicates that 13,220 cases of child abuse were reported in 1993, of which 28% were cases of physical abuse and neglect, 46% involved psychological abuse and neglect and 16% involved sexual abuse.

Government policy is to establish well-profiled advisory and disclosure centres to deal with child abuse. The government expressed its stance on this issue on 31 August 1993 and the Working Group on Child Abuse Disclosure Centres was subsequently set up in 1994 to advise the government. It has drawn up a framework of conditions which child abuse advisory and disclosure centres must meet. Disclosure centres must be part of the regional structure of facilities and must be able to call on the social services or the child care and protection boards for adequate and speedy assistance for children. It was against this background that four pilot projects for child abuse disclosure centres started in 1995. Centres providing medical counselling in cases of child abuse will have to be incorporated in these advisory and disclosure centres.

Child Care

166. The 1994 Social Welfare Act took effect on 1 January 1994. This act lays down the responsibilities of national, provincial and local authorities and sets out the principles of complementary administration and cooperation. Child care falls under the responsibility of local authorities and within the scope of the act. As a relatively new and burgeoning sector, child care has enjoyed a brief period of exemption from guarantees relating to the quality of care. Where possible, the Act seeks to establish standards by means of self-regulation: each sector is itself responsible for drawing up a national set of standards in cooperation with the subsidizing authority. In the case of child care, this general rule does not apply. Instead it was decided to draw up an order in council - based on the Act -which would lay down minimum standards for the quality of care. Local authorities must incorporate these minimum standards in their bylaws, which apply to all child care facilities, whether subsidised or not. They are expected to elaborate these standards, and may impose stricter conditions. The sector itself is also developing a national system, which should be completed by the year 2000. In five years time, at the latest, the government will investigate whether the present minimum standards laid down by order in council can be replaced by the national standards.

Since 1990, the government has pursued an incentives policy geared to expanding organised child care, and has earmarked extra resources for this purpose. It was hoped to increase capacity by 50,000 places between 1990 and 1993. To this end the Child Care Incentive Scheme was introduced, whereby local authorities received a grant of about five thousand guilders per place per year. The authorities had to find the rest of the money needed to fund child care from parental contributions, revenue from companies renting places for their employees' children and their own resources.

The incentive scheme was extended for a two-year period (1994 - 1995) to place the sector on a stronger footing and to achieve further expansion by renting more places to companies and organisations. It terminated at the end of 1995, and the fonds were transferred to local authorities. Since 1996, employees providing child care facilities for their employees have been given a tax incentive.

The main aim of this policy is to increase capacity and - as a knock-on effect - to increase female employment. It is hoped that by attaching certain conditions to grants and making recommendations to local authorities certain subsidiary aims can be achieved:

- increased access to child care facilities for low-income groups, children from ethnic minorities and children from one-parent families;

- involvement by companies, organisations and associations of employees and employees in the expansion and funding of child care;

- improvements in quality.

The results of these measures can be seen from the following figures:

- the number of local authorities providing child care has risen from about 200 to about 600 (95 % of all local authorities);
- child care capacity in the Netherlands increased between 1989 and 1994 from 20,000 to 70,000 places;
- the number of facilities (day nurseries, after-school services, child-minding agencies) rose from 900 to 2,200;
- the number of places rented to companies rose from 2,700 in 1989 to 24,000 in 1994. In 1994, 3 5 % of the total capacity was rented to companies;
- it is thought that there are now at least 220 collective agreements and corporate schemes relating to child care;
- the number of employees in the child care sector increased from 4,400 to nearly 16,000 between 1989 and 1994;
- the average yearly cost of a full-time child care place for a child in the 0-4 age group is NLG 17,000;
- the contribution paid by parents is income-related. The minimum contribution is NLG 95 per month, the maximum NLG 1047 per month. These sums are based on central government recommendations. Local authorities are free to set their own prices.

As a result of expansion, the structure of the child care sector has also changed. There are more organisations, and some are bigger than formerly. This has not just resulted from growth, but also from mergers, cooperative structures and regionalisation. The differences can be seen at various levels: organisations manage more centres, and the centres themselves have become larger. These changes mainly affect the organisations actually operative in the sector.

An ever greater number of child care places (24,000 out of a total of 70,000 at the end of 1994) are hired by firms wishing to offer child care facilities to their staff. This is often regulated through collective agreements. Company crèche places have become a structural source of income. At the same time, parental contributions have also increased. Although public spending on child care has increased in absolute terms, it has declined in relative terms.

As of the end of 1993 child care funding broke down as follows:

state (central and local authorities)	NLG 473 million	53%
parents	NLG 245 million	20%
employees	NLG 176 million	27%
Total	NLG 894 million	

Adoption

167. The adoption of children is regulated by Dutch law. The main criterion, as set out in article 227, paragraph 2 of the Civil Code, is the interests of the child. The Placement of Foreign Foster Children Act (Bulletin of Acts and Decrees 1988, 566) lays down provisions safeguarding this principle. These provisions also comply with the requirements of article 8 of the International Convention on the

Rights of the Child in that they state that the authorities and parents must have agreed to the child's leaving, and that it must be proven that the child has expressly been relinquished.

The adoption of foreign children is supposed to take place through the agency of licensed legal persons recognised by the Ministry of Justice. Where individuals seeking to adopt do not make use of such persons, the licensed bodies, which form the sole channel for obtaining the original copy of the family report, are obliged to investigate the contacts listed by the above individuals to check their reliability and integrity. This also includes not charging excessive fees.

168. Certain changes have been made in the regulations for adoption:

- the previous requirement that the child not be a legitimate or natural child of either of the adoptive parents has been dropped, making step-parent adoption and the adoption of one's own child possible;
- both adoptive parents should be at least eighteen years and at most fifty years older than the child, except in cases where a person is adopting his or her own legitimate or natural child;
- adoption cannot take place if the child is fifteen years of age or older, and objects to the adoption.

169. Since 31 May 1995 (the date on which the amended Placement of Foreign Foster Children Act entered into force) contacts between individuals seeking to adopt and persons or bodies abroad are monitored in advance. Foreign contacts through whom individuals seek to adopt (without official mediation as referred to above) must be investigated beforehand, so that the Minister of Justice can decide whether or not to sanction the mediation of such a contact, whether it is an individual or an organisation. An order in council lays down uniform and objective criteria to be adhered to in such investigations.

International Conventions on Child Abduction

170. By Kingdom Act of 2 May 1990 (Bulletin of Acts and Decrees, No. 201), the European Convention on the Recognition and Enforcement of Decisions concerning the Custody of Children and the Hague Convention on International Child Abduction were ratified. The Act ratifying the two conventions entered into force on 18 May 1990, and the Act of 2 May 1990 implementing them (Bulletin of Acts and Decrees, No. 202) entered into effect on 1 September 1990. This means that it is now possible to tackle the phenomenon of international child abduction with maximum effectiveness.

Minorities and indigenous children

171. In the Netherlands there is nothing to prevent children from minorities (minorities in the sense of ethnicity, religion, ideology or language) from joining together with other members of the minority to which they belong and maintaining their own cultural traditions, worshipping according to their religion, expressing or following their ideology or using their own language. The indigenous Dutch population is fairly homogenous - The only linguistic minority indigenous to the Netherlands are the Frisians, who come from the province of Friesland in the north-west of the country. The Frisian language enjoys special status and has been a compulsory subject at Frisian preliminary schools since 1980.

The main ethnic minority groups in the Netherlands are: Turks, Moroccans, Surinamese, Antilleans (the four largest groups), Greeks, Italians, former Yugoslavs, Cape Verdeans, Portuguese, Spaniards, Tunisians, Moluccans, refugees, caravan dwellers and gypsies. These groups are targeted by Dutch minorities policy.

The age structure of minority groups deviates from that of the population as a whole. There is a relatively high proportion of young people, and relatively few old people. This trend is very marked in the four largest cities in the Netherlands. In Amsterdam, 55 % of primary school pupils are from minority groups. For The Hague, Rotterdam and Utrecht the percentages are over 41 %, just under 50 % and over 35 % respectively. In other large towns, such as Eindhoven, Groningen or Dordrecht the percentages are much lower (around the 14-19% mark). In the case of Amsterdam, it is thought that about 62% of school leavers in 2005 will be from ethnic minorities (Minorities policy annual report, 1995). In the case of the indigenous Dutch population, young people up to the age of 25 make up only about 30% of the total population. The under 15s account for about a third of the various ethnic minority groups, whereas they do not even account for 25% of the indigenous population. This high representation is most marked in the case of Turks and Moroccans (35% and 40% respectively). This compares to only 18% in the case of indigenous young people in the same age category.

Framework Convention for the Protection of National Minorities

172. The Framework Convention for the Protection of National Minorities, recently signed by the Netherlands, contains a number of articles relating to various educational facilities. The Netherlands will apply the convention to:

(a) the Frisians;

(b) members of the following categories of ethnic minority who are legally resident in the Netherlands: Greeks, Italians, former Yugoslavians, Cape Verdeans, Moroccans, Portuguese, Spaniards, Tunisians, Turks, Surinamese, Antilleans/Arubans, refugees, asylum seekers, caravan dwellers and gypsies.

The convention seeks to promote knowledge of the culture, history, language and religion of national minorities and of the majority through education and research. It also considers the right of members of national minorities to set up their own establishments of education and training. However, this right is qualified in two ways. Firstly, it is confined to private institutions, which - as the second paragraph clearly states - do not involve any financial commitment for the state. Of course, a state may decide to subsidise an institution of this kind, but it is not obliged to do so under the terms of the Framework Convention. Secondly, this right may only be exercised within the framework of a country's education system.

In the Netherlands, private schools based on particular religions or educational beliefs may be funded by the state if the institutions in question meet funding requirements (e.g. in terms of their teaching structure, subjects offered, suitability of teaching staff).

The Convention moreover provides that members of national minorities have the right to learn their own minority language, i.e. to be taught it and taught in it.

Publicly-funded education seeks to respect different religions and ideologies. With the position of minorities in Dutch society in mind, legislation provides that publicly-funded education must contribute to the development of pupils, taking account of ideological and social values held in Dutch society and recognising the significance of the diversity of those values, and that it must be accessible to all children without discrimination on the basis of religion or ideology (section 29 of the Primary Education Act).

Inter-cultural education, which concerns relationships between ethnic groups, is designed to foster amicable inter-ethnic relations. A project group on inter-cultural education has been set up by the Ministry of Education, Culture and Science and the Ministry of Health, Welfare and Sport to launch this new branch of education. The project group initially concentrated on setting up a framework for education preparing for a multicultural society. Since there are still many schools ('white' or 'black') that do not offer inter-cultural education, efforts are now being made to develop a sound implementation strategy to make this a standard part of the curriculum.

Minority language and culture teaching

173. In 1984 statutory regulations were introduced for Minority Language and Culture Teaching (OETC). Under this new legislation, most of the groups targeted by national policy on minorities as well as pupils from EU Member States acquired the right to 2.5 hours of OETC during school hours and another 2.5 hours' instruction, if so desired, outside school hours. The largest groups targeted by minorities policy, the Surinamese and Antilleans - who speak Dutch - were excluded from this policy. The legislation regulating OETC was incorporated into the Primary Education Act in 1985. Out-of-school OETC has continued to exist alongside the OETC classes organised by schools, with the Chinese being particularly active in this area. Quite separately from this, many Moroccan and Turkish children attend lessons on the Koran.

OETC lessons are largely given over to language teaching. To a lesser extent, pupils also receive lessons in the history and geography of their country of origin. Although not initially the intention, it appears that more than half of the teachers devote part of the lesson to religions instruction (Education Inspectorate, 1988). There are a large number of problems involved in the provision of OETC:

- many of the teaching staff have little or no knowledge of Dutch, and lack suitable qualifications;
- there are not enough adequate teaching materials, attuned to the Dutch situation;
- there are no clearly defined curricula;
- OETC teaching staff are not considered part of the regular staff and OETC is often cut off from what goes on in the school as a whole. The funding system for primary and secondary schools includes separate funds to pay for extra teachers to instruct ethnic minority pupils and provide lessons in minority languages and culture.

Minority language teaching

174. As from 1 August 1997, minority language teaching will acquire a new form and a new acronym (OALT). The bill to effect this is under preparation and is based on the principles set out in the policy memorandum on minority language teaching. The bill provides for municipalities to be given funds for OALT which they can allocate as they see fit. One of the requirements imposed is that OALT teachers must have a Dutch teaching qualification, and another is that OALT lessons must be taught outside regular school hours. This obviously lengthens the school day, and creates a clear division between regular lessons based on the general curriculum and minority language teaching outside school hours. Some people fear that it will mean a loss of status for minority language teaching, besides which lessons scheduled for after-school hours create organisational difficulties. The amendment has therefore not been welcomed enthusiastically in all quarters. The Chinese, however, who have hitherto been excluded from Dutch policy on minorities and who have therefore had to fund the teaching of Chinese themselves, will now endeavour to obtain subsidies through OALT channels.

Supervision orders

175. On 1 November 1995 new legislation on supervision orders entered into force. This legislation creates a clear distinction between the powers of the children's judge and those of the family supervision agency in the event of a child being placed under a supervision order, a court order made in the sphere of child care and protection. A supervision order may be applied for where serious concern arises about a child's development.

As a result of the new legislation, the supervision agency is no longer overseen directly by the children's judge but is itself responsible for what happens white the supervision order is in place. A children's judge who places a child under a supervision order will at the same time appoint a family supervision agency that in turns designates a supervisor. The supervisor's task is both to supervise the child and to help the parents with the child's upbringing.

If the implementation of a supervision order creates problems of such a serious nature that the agencies involved - together with the parents and minor (where the latter is aged twelve or older) - are unable to resolve the situation satisfactorily, the children's judge may be asked to give a decision as to the course of action to be taken. The children's judge also decides on other matters, such as whether a supervision order should be extended or cancelled, and whether a child should be placed in care.

These regulations strengthen the position of the children's judge as an independent tribunal. A supervision order is imposed for a maximum of one year, but may be extended by the children's judge each year at the request of the supervision agency, the parents or the minor concerned (where he or she is aged twelve or over). All the interested parties are heard before such a decision is made. The supervision order ends automatically, in any case, when the child reaches the age of majority, and it ceases to apply if the parents are divested of parental responsibility (whether this occurs with or without their consent).

Registration of minors who run away from home

176. On 6 December 1995 the Youth Services Act and the Criminal Code were amended in relation to the provision of services to minors who have run away from home.

If a minor runs away from home and is taken in elsewhere, it is now mandatory (as from 1 February 1996) to inform the parents or guardian of this. The main point of such notification is to provide reassurance that the child is in safe hands; the child's whereabouts need not in principle be revealed. Whether the child is being cared for by an institution or by private individuals is irrelevant in this context; the parents or guardian must be notified in all cases.

Unaccompanied minors arriving as asylum seekers

177. The Research and Documentation Centre (WODC) studied Dutch policy on the reception of unaccompanied minors arriving in the country as asylum seekers (known by the Dutch acronym of "AMAs") and arrived at a positive assessment. The Netherlands has a specific policy targeting this group of extremely vulnerable asylum seekers. This policy includes special reception facilities. In addition, minors who are residing in the Netherlands without a legal representative are assigned a guardian.

Child pornography

178. The provisions of criminal law governing certain acts related to child pornography were tightened up as from 1 February 1996. The penalties that may be imposed on offenders have also been increased. Article 240b of the Criminal Code has been amended to give better protection to victims (or potential victims) of sexual abuse who are under the age of 16. The prime focus is on protecting the child.

Paragraph 3

179. Reference can be made to the second periodic report of the Netherlands on this provision (nos. 156 and 157) regarding the right to acquire a nationality.

Article 25: Right to take part in public affairs

Paragraph b

180. Under the Constitution, only Dutch nationals have the right to vote and stand in Parliamentary and provincial elections. However, article 130 of the 1983 Constitution provides for the possibility that the right to elect members of a municipal council and the right to be a member of a municipal council may be granted by Act of Parliament to residents who are not Dutch nationals provided they fulfil at least the requirements applicable to residents who are Dutch nationals. For details on the legislation in question, reference can be made to nos. 165 and 170 of the second periodic report of the Kingdom.

Residents who are not Dutch nationals were granted the right to vote under the Franchise Act and to become members of municipal councils under the Municipalities Act. As stated above, they must fulfil the requirements applicable to residents who are Dutch nationals. In addition to fulfilling these requirements, Section B 3 of the Franchise Act and Section 21 of the Municipalities Act require them to have resided in the Netherlands for a consecutive period of at least five years, with a valid residence permit. Residents who are not Dutch nationals and who have been posted to the Netherlands by another state, their spouses or partners and their children who live in the same household, are not entitled to vote.

181.Since 1996 nationals of European Union Member States residing in the Netherlands have the right to vote and to stand in municipal elections under exactly the same conditions as voters who are Dutch nationals. This means that EU citizens residing in a Dutch municipality do not have to have resided in the Netherlands for a consecutive period of at least five years. This is a consequence of the 1992 Treaty of Maastricht. Article 8b of the Treaty ensures that all citizens of the Union, whether or not they are nationals of the Member State in which they reside, can exercise in that state their right to vote and to stand as candidates in municipal elections under the same conditions as nationals. The national legislation of the Member States had to be adapted in accordance with article 8b by 1996. In the last municipal elections (in 1994), according to our information, 76 persons of minority groups were elected to sit on municipal councils. Most of them are non-Dutch nationals. The individual figures for the various nationalities/ethnic origins are as follows:

Turks	31
Moroccans	6
Italians	1
Zaireans	1
Egyptians	1
Yugoslavians	1
Chileans	1
Greeks	2
Surinamese	20
Antilleans	6
Moluccans	6

The figures only give an indication. Exact data are not available, since municipal councils are not obliged to provide information on their national or ethnic composition.

Paragraph c

182. In the second periodic report, the right of foreign nationals to hold public office was dealt with under article 27 (minorities). However, in view of the wording of the articles in the Covenant, this matter will henceforth be discussed under article 25 (c).

183. On 2 November 1988 the 1858 Foreign Nationals (Public Service) Act was repealed. This Act specified a limited number of posts to which foreign nationals could be appointed as public servants in government service. In principle, now that this Act has been repealed, foreign nationals can be appointed as public servants in any post in the public service, unless the post in question is subject to a legal requirement that the holder be a Dutch national. This makes the legal status of non-Dutch nationals working for the government virtually equal to that of Dutch nationals.

Foreign nationals can now hold all posts where a significant link between nationality and the duties of the post can no longer be deemed to exist. This link does, however, exist in the case of jobs an essential part of which involves exercising direct authority over citizens, and posts connected with national interests, particularly the internal and external security of the state. Specifically, these are posts in the judiciary, the police force, the military apparatus, the representation of the Netherlands abroad and posts involving access to sensitive and secret information. Dutch nationality is only a precondition for holding these posts.

Article 26: Prohibition of discrimination

184. As was explained earlier, article 3 of the Covenant will be discussed together with article 26 in this section.

185. In the previous report submitted by the Netherlands Government, reference was made to the preparations for legislation to tackle discrimination on grounds of sex, marital status and sexual orientation. An Equal Treatment Bill was presented to Parliament in March 1988. After fierce criticism both from Parliament and from non-governmental organisations, the bill was withdrawn in 1989. The main criticism was related to the scope for exemption for religions, philosophically-based and political organisations. The ban on discrimination provided for in the bill would not apply to requirements which such organisations could reasonably be expected to make on the basis of their principles and aims. The absence of an adequate enforcement mechanism also received considerable criticism.

Immediately after taking office in 1989, the new Government withdrew the Bill. A start was made on drawing up a new Bill. This went to Parliament in February 1991 and the Equal Treatment Act entered into force on 1 September 1994. The Act contains general regulations to protect individuals against discrimination on the grounds of religion, belief, political opinion, race, sex, heterosexual or homosexual orientation and marital status. The Act aims at promoting participation in a number of areas which are of great importance to the individual. In these areas, the Act bans any discrimination on the grounds listed above, except in cases where the Act states that discrimination is justified.

The grounds for exception are limited and very strictly formulated. The ban on discrimination laid down in the Act shall not prejudice the freedom of religions, philosophical or political institutions and private educational institutions to set requirements which, in view of the aims of these institutions, are necessary for exercising the duties of a particular post or upholding the principles of the institution. The Act states that such requirements must not lead to discrimination based on the mere fact of race, sex, heterosexual or homosexual orientation or marital status, or merely on religion, belief or political opinion, depending on the principles of the institution. The fact that someone is homosexual must not, therefore, be a factor in assessing that individual's suitability for a particular job. The distinguishing criteria described in the Act may never be used as an independent reason for discrimination.

The new Bill paid particular attention to the question of enforcement. Anyone who feels to have been discriminated against may take his or her case to court on the basis of the provisions banning discrimination. In addition, pressure groups have also been authorised to take such cases to court. The Act sets up an Equal Treatment Commission, which is an independent body, easily accessible to anyone, and responsible for investigating and assessing alleged cases of discrimination. The Act thus provides for special monitoring of compliance with the new legislation.

Any individual who believes that he or she has been discriminated against is able to go to the Commission, which may start an inquiry and assess the facts. The Commission is also authorised to launch investigations of its own accord into systematic discrimination within the public and private sector or in any area of society. It may, at its own discretion, make recommendations on ways in which discriminatory policies should be altered. The Commission may send copies of its assessment to the institutions or organisations involved. It is authorised to institute legal proceedings on its own behalf to obtain judgments on acts which contravene the law. (See Core document, p. 48-52, nos. 178-193).

186. Parliament has ratified the UN Convention on the Elimination of Discrimination Against Women. It entered into force for the Netherlands on 23 July 1991.

187. On 1 July 1989 the revised Equal Opportunities (Employment) Act entered into force. This Act replaces three others which dealt with work and remuneration. The Act prohibits direct and indirect discrimination at work. Direct discrimination is directly related to whether the individual in question is a man or woman. Indirect discrimination refers to what initially appear to be neutral measures, regulations or conduct, but in practice prove to benefit or harm one particular sex. This type of indirect discrimination is banned, unless it is objectively justified.

The Act applies to employment in the broadest sense, including recruitment and selection, the conclusion and termination of employment contracts, terms and conditions of employment, promotion, training, exams and career guidance. Anyone who carries out work under the authority of another may invoke the Act. It not only applies to work under an employment contract or civil service regulations but also to other working relationships such as work experience placements, voluntary work and work carried out legally by people receiving benefits. Military personnel and the professions are also covered by the Act.

The Equal Opportunities (Employment) Act remained in force when the Equal Treatment Act, discussed above, entered into force on 1 September 1994. The specific rules contained in the former take precedence in cases of sex discrimination in relation to employment.

188. As mentioned in the above, any individual who suspects that discrimination is taking place may report this to the Equal Treatment Commission.

189. In 1988 the Central Appeals Tribunal decided that survivors' pensions should be granted to widowers on the same basis as widows. This ruling was based on article 26 of the Covenant. The General Widows and Orphans Benefits Act has been replaced by the General Survivors Act, which entered into force on 1 July 1996. The new legislation is based on a modified needs criterion deriving from the blurring of male and female roles, and the principle that equal treatment should be accorded to men and women and to marriage and other cohabitation arrangements.

190. The Bill for the equal treatment of men and women under the Victims of Persecution (1940-1945) Benefits Act and the Civilian War Victims (1940-1945) Benefits Act proposed that the

breadwinner requirement, which discriminated against married women, be abolished to bring the Act into line with article 26 of the Covenant. The Bill became law in October 1991.

191. In 1988 the Central Appeals Tribunal decided that certain elements in the General Disablement Benefits Act were incompatible with the spirit of article 26 of the Covenant. The Tribunal's criticisms were directed at the statutory conditions applying to persons who had become disabled before 1 January 1979, which meant that men and unmarried women were entitled to benefits without means-related criteria, whereas married women were not entitled to benefits at all.

This ruling by the Central Appeals Tribunal prompted the government and parliament to abolish this distinction. Equality of treatment has now been assured by the introduction of a single condition, namely that all disabled persons should undergo a means test in order to qualify for benefits. This has eliminated the distinction between the two categories of person.

192. As a result of the Committee's views of 9 April 1987 on the communications of Broeks and Zwaan-De Vries concerning an alleged violation of Article 26 because of a refusal to pay benefits under the Unemployment Benefits Act to married women/non-breadwinners and the entry into force of the various EC Directives on the equal treatment of men and women, significant developments have taken place in the areas of both the administration of justice and legislation. In the case law, almost all the main social security regulations in the Netherlands have been examined for compatibility with the principle of the equal treatment of men and women. Other distinctions, however - such as that between married and unmarried persons living together - have been the focus of attention in various proceedings. As already noted, this has led to various new Bills being drafted in the area of social security.

For the Government, this case law did not merely entail a simple adjustment of existing regulations; it also gave rise to complicated problems with regard to interim law and determining the validity of financial claims in a non-discriminatory manner. In order to subject the relevant problems to further analysis and - if possible - to prevent them arising in the future, the Netherlands Government commissioned a comprehensive study. The study made a detailed analysis of the various non-discrimination provisions in national and international law. Various points were examined:

- the circumstances which determine the legitimacy of a distinction made in legislation and in judicial practice (whether in respect of gender, marital status of persons living together, nationality, full-time or part-time employment, previous employment or age);
- the proper way for the Government to arrive at balanced decisions when preparing legislation;
- the date by which the Government is obliged to have eliminated certain types of distinction;
- the role of the courts in adhering to the principle of equality; and
- the proper action for executive bodies to take when unjustified distinctions are seen to occur in practice.

This study led to the conclusion that no criterion can be either legitimate or unwarranted in all cases. (An illuminating example is the judgement of an arbitration tribunal considering the question of whether it was legitimate for a company advertising a vacancy in its warehouse to require that the successful applicant speak Dutch. The tribunal decided that it was not. (Migrantenrecht, 1988, No. 50). This means that much will depend on the concrete circumstances of the case, such as the purpose of the regulation, the purpose of the distinguishing criterion introduced, the relationship between ends and means etc. In any case, the Government should always explain why a given criterion is being set; in other words it should give the objective justification for the distinction.

193. The terms and conditions of employment applying to civil servants ensure equal treatment for married and unmarried couples as follows. If two partners maintain a joint household and can submit a notarial deed as evidence of a cohabitation agreement, they will be treated on the same basis as a married couple.

194. The Civil Code contains provisions that protect persons from dismissal whilst they are performing compulsory military service. In September 1991 a law was passed which extends the scope of this protection to include individuals conscripted in a country other than the Netherlands.

195. In February 1992 various additions to the Criminal Code were made to combat discrimination on the grounds of race, religion, beliefs, gender or sexual preference (see also observations in respect of Article 5). By means of amendments to Articles 90 quater, 137c to 137g inclusive and 429 quater, existing criminal law anti-discrimination legislation has been tightened up, and the grounds on which discrimination is brought into the criminal sphere have been extended beyond religion, convictions and race the latter understood as incorporating colour, origin and national or ethnic descent to include gender and sexual preference (specifically heterosexuality or homosexuality). The principle underlying this broadening of scope is that inclusion of a prohibition in criminal law has a preventive effect. The changes make it easier to act when women, for example, are subjected to discrimination and/or aggression.

Other significant changes are:

> Article 90 quater of the Criminal Code redefined the concept of discrimination. "Discrimination" is now said to have occurred when a given distinction is made which either aims to violate human rights and fundamental freedoms, or which has that effect, in any area of social life. Thus the anti-discrimination provisions in criminal law do not relate solely to dealings with government bodies or comparable private organisations, but to the entire fabric of social life outside the sphere of personal relations.
>
> Discrimination in the exercise of professional or business activities has been made an indictable offence in the new Article 137g of the Criminal Code, whilst remaining a summary offence under Article 429 quater of the Criminal Code. Furthermore, it is now also an offence under these provisions to practise discrimination whilst discharging one's duties in public office.
>
> Article 137f of the Criminal Code bas been changed so that participation in discriminatory activities, or providing material assistance for the benefit of such activities, is now an indictable rather than a summary offence.
>
> It has also become an offence, under Article 137e of the Criminal Code, to confront third parties with unwanted discriminatory utterances, for instance by sending them unsolicited publications through the mail.

Individual complaint (communication No. 402/1990)

196. In 1990 Mr H.A.G.M. Brinkhof, a conscientious objector to both military service and substitutes civilian service, submitted a communication to the Human Rights Committee in Geneva, claiming a violation of Articles 6, 7, 8, 14, 18 and 26 of the Covenant on Civil and Political Rights. The subject of the complaint was, *inter alia,* that in the Netherlands persons refusing to perform both military service and substitutes service are given a prison sentence while Jehovah's Witnesses are exempt from both military and substitutes service. The Committee decided that Mr Brinkhof's claims were inadmissible, with the exception of the matter regarding different treatment of Jehovah's Witnesses. The Committee subsequently decided that Mr. Brinkhof had not shown that his convictions were "incompatible with the system of substitutes service", nor that the special treatment accorded to

Jehovah's Witnesses "adversely affects his rights'. The special treatment of Jehovah's Witnesses itself was considered unreasonable, however, and the Committee recommended that the Kingdom of the Netherlands review its legislation on this issue. The recommendation of the Committee was not implemented by the Kingdom, however, as in 1993 the Government decided, as part of the reorganization of the armed forces, to abolish the obligation to enlist. The remaining conscripts will be phased out gradually and the armed forces will consist entirely of volunteer forces from 1 January 1997 onwards.

Discrimination on grounds of age

197. Increasing attention is being paid in the Netherlands to discrimination on the grounds of age. The Netherlands Government regards this as an important issue. The forms which this discrimination takes and the areas it affects are so diverse that farther study is needed before a clear policy can be formulated. A study has already been carried out into the acceptability of setting age limits for employment. The Government, employees' organisations and trade unions are holding talks under the auspices of the Joint Industrial Labour Council on developing a policy on age criteria for employment. The talks are based on a consultative document produced by the Ministry of Social Affairs and Employment. A civil service working group conducted a farther general study of this matter in other areas of society, focussing primarily on age discrimination in regulations and legislation. Its report appeared in March 1996.

By judgement of 13 January 1995 the Supreme Court held that unequal treatment on the grounds of age might possibly be incompatible with article 26 of the Covenant. The deciding factor is whether there is a reasonable, objective justification for any difference in treatment. The Supreme Court found no grounds for claiming that the rule by which employment ends at the age of 65 was no longer in accordance with the perception of the law among broad strata of society.

The Integrated Action Programme on Policy on the Elderly 1995-1998 sets out the basic principles governing policy on the elderly and outlines an extensive list of action points.

Action points on age discrimination are: the Ministry of Health, Welfare and Sport is encouraging the abolition of age limits by calling on all publicly-funded organisations to abandon the practice of making unjustified age distinctions. A study will eventually show whether and to what extend these organisations have amended their statutes and mules.

Numerous organisations, many of which work together in the National Consultative Forum on Age Discrimination, are trying hard to abolish age discrimination. The Government will provide funding for these organisations where possible. The National Age Discrimination Office (LBL), established in 1994, which investigates the legal and social aspects of age discrimination, plays a key role in these efforts. The LBL is working to increase understanding of these aspects of age discrimination, to encourage debate on the question of age limits in laws and regulations and to study age requirements in education.

Following the debate in the Lower House on the Equal Treatment Act on 10 February 1993, the government proposed conducting a study to determine whether the disabled suffered discrimination and, if so, whether discrimination against the mentally and physically handicapped existed to such an extent as to justify legislation against it.

The first part of the study was completed in December 1994. The findings revealed the existence of discrimination, particularly in the workplace (25%). Discrimination was found to be less of a problem in other areas of life, where it arose primarily from prejudices based on statistics or on consumer discrimination (assuming a negative response on the part of customers). The study's findings are currently under discussion.

Article 27: minorities

Burial and Cremation Act

198. The amendments made to the Burial and Cremation Act in 1991 made considerable allowance for Hindu and Muslim precepts and customs. For example, it is now possible for people to be buried or cremated other than in a coffin, and for urns to be taken home. A Bill for farther amendments to the Act (currently before the Council of State) proposes an increase in the number of places where the ashes of a deceased person may be scattered.

The training of imams

199. The principle of the separation of Church and State ensures that the government does not concern itself with the job requirements for clerics. Nor does it provide training courses for them. However, the holders of positions of this kind (e.g. imams, pandits) have an important role to play in the process of integration for ethnic minority groups.

In January 1997, the State Secretary for Education, Culture and Science presented a report entitled "The training of imams in the Netherlands: opportunities and problems" by Dr N. Landman to the Lower House of Parliament. The report lists the training courses for imams that exist in the Netherlands and examines international aspects of such training and employment problems affecting imams.

An interdepartmental working group has been set up to study and develop the report's findings, and notably the preparatory work in secondary schools. It will put forward proposals for an integrated approach at government level. The Ministry of Education, Culture and Science will develop the training course for imams on the basis of the report.

Within the framework of science policy for 1997, the Minister of Education, Culture and Science is holding out the prospect of funding for an inter-university Islamic studies centre to co-ordinate and foster scholarly research in this field, which is at present very scattered.

Minority language teaching

200. A good command of Dutch helps ethnic minorities to play an active part in society. In addition, a sound knowledge of their own language and culture helps people from minority groups to orient themselves in society. On 23 June 1995, the policy memorandum on new arrangements for minority language teaching was submitted to the Lower House. It proposed that existing funds for minority language teaching should be allocated to the municipalities in the form of specific-purpose grants. Local ethnic minority organisations and representatives of ethnic minority parents will then determine, at local level, which languages will be taught in their area, in addition to the compulsory curriculum.

In secondary education, minority language teaching will be incorporated in policy on modern languages.

Legal status of gypsies and caravan dwellers

201. Some 3,000 Sinti and 800 Roma live in the Netherlands. These are groups with a related language and culture. Following a promise made by the Minister of the Interior to the Lower House, 1996 saw the launch of a monitoring mechanism for caravan dwellers, Roma and Sinti. To this end a survey is being made of the geographical spread of caravan sites in municipalities and a study is being conducted of three regions with a comparatively large number of sites (the south, the west and the east). The indicators on which this qualitative description will be based are as follows: age structure

and composition of households, state of health and use made of health care facilities, education and training, employment and income (unemployment, benefits, tax matters), public safety (victim status, contacts with the police, convictions), extent of caravan ownership, participation in the life of society and assessment of the residential environment. The study will probably be completed in the first half of 1997.

Consultation

202. The Minorities Policy (Advisory Bodies) Act entered into force on 21 September 1994. The Act provides for advisory bodies to be set up which make written recommendations within the framework of the national minorities policy advisory and consultative structure. Consultation also takes place between a government delegation headed by the Minister of the Interior and representative associations of ethnic minority groups.

All external advisory bodies to central government, including those concerned with minorities policy, were abolished on 1 January 1997, when the advisory system was restructured. The government is endeavouring to ensure proportional representation of ethnic minorities in all advisory bodies.

The Minorities Policy (Consultation) Bill was debated in the Lower House on 20 February 1997. The Bill regulates consultation between the government and representative associations of minority groups. Such consultations will discuss policy plans and allow ethnic minorities to give their view on matters they believe important to the development of a harmonious multi-cultural society.

ANNEX

Revised to take account of all changes up to and including the Second Amendment, dated 23 July 1996 (Lower House of the States-General, parliamentary year 1995-1996, 22588, no. 12).

Regulations on medical research involving human subjects (Medical Research Involving Human Subjects Act)

No.9

AMENDED BILL
22 January 1996

We Beatrix, by the grace of God Queen of the Netherlands, Princess of Orange Nassau, etc., etc., etc.,

Greetings to all who shall see or hear these presents! Be it known:

Whereas We have considered that it is desirable, partly on the basis of Sections 10 and 11 of the Constitution, to regulate the conduct of medical research involving human subjects;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

Paragraph 1. General provisions

Section 1

1. Within the context of this Act and the associated provisions, the meanings of terms listed in this paragraph under *(a)* to *(g)* shall be as indicated.

(a) Our Minister: Our Minister of Health, Welfare and Sports;

(b) research: medical research in which persons are subjected to treatment or are required to behave in a certain manner;

(c) subject: a person as referred to under b;

(d) research protocol: the detailed description of proposed research;

(e) facilitative institution: institution or company at which research activities take place;

(f) the party conducting the research: the party who commissions the organisation or performance of research;

(g) the party performing the research: the party responsible for the actual performance of the research. If the research is actually performed by an employee or other assistant, then the party making use of that person's services shall be deemed to be the party performing the research.

2. Subjecting persons to treatment, or requiring persons to behave in a certain manner, purely for their own good, shall not be deemed to be research as defined in this Section, first subsection, under (b)

3. This Act shall not be applicable to research whose conduct requires authorization under the terms of the Population Screening Act (Bulletin of Acts, Orders and Decrees ...

Section 2

1. Research shall be conducted in accordance with a research protocol written for the purpose.

2. The research protocol shall require approval as follows:

(a) Approval by a suitably authorized committee recognized under the terms of Section 14 shall be required where clause b, under 2', 3' or 4', is not applicable.

(b) Approval by the central committee referred to in Section 12 shall be required where:

1. a ruling on an administrative appeal is required;
2. the research is of the kind referred to in the second sentence of Section 3a, first subsection, if such research is to alter the condition of the subject without being of direct benefit to him or her;
3. the research is of a kind which requires review by the central committee in accordance with Section 16a;
4. the form of research involved has been identified by order -in council as a form regarding which there is relatively little scientific knowledge.

3. Review of the research protocol shall take place in accordance with Sections 2 and 4.

Paragraph 2. Regulations on research involving human subjects

Section 3

A committee shall only be empowered to approve a research protocol provided that the following conditions are met:

(a) it is reasonable to expect that the research will lead to the advancement of medical science;

(b) it is reasonable to expect that the advancement referred to under a could not be achieved without the participation of human subjects or with a less radical intervention;

(c) it is reasonable to expect that the risk to and burden for the subject will be in proportion to the potential value of the research;

(d) the methodology of the research is to be of the requisite standard;

(e) the research is to be performed by or under the supervision of persons possessing research expertise, at least one of whom possesses expertise of direct relevance to the research activities in which the subject is to participate;

(f) it is reasonable to expect that any payment offered to the subject would not unduly influence his or her willingness to participate in the research;

(g) the research satisfies any other reasonable requirements.

Section 3a

1. It shall be forbidden to conduct research involving as subjects persons of less than eighteen years of age or persons who cannot be deemed capable of reasonably assessing their interests in the matter. This prohibition shall not apply to research which may be of direct benefit to the subjects, nor shall it apply to research which could not be conducted without the participation of persons of the same category as the subject, provided that the risk associated with participation is negligible and the burden minimal.

2. If a subject involved in research of either of the kinds referred to in the second sentence of this Section, first subsection, should object to receiving treatment or behaving in the required manner, the person in question shall be excused from participation.

Section 3b

It shall be forbidden to conduct research involving as subjects persons whose actual or legal relationship with the party conducting or performing the research or with the party recruiting the subjects is such that this relationship may reasonably be expected to be prejudicial to the principle of free consent. This prohibition shall not apply to research which may be of direct benefit to the subjects, nor shall it apply to research which could not be conducted without the participation of persons of the same category as the subject.

Section 4

1. It shall be forbidden to conduct research under the following conditions:

(a) if the subject is of age and if clause c is not applicable: without the subject's written consent;

(b) if the subject is a minor of at least twelve years of age and if clause c is not applicable without the written consent of the subject and the subject's parents (if they are the legal guardians) or legal guardian;

(c) if the subject is at least twelve years of age but cannot be deemed capable of reasonably assessing his or her interests in the matter: without the written consent of the subject's parents (if they are the legal guardians), or legal guardian, or (if the subject is not a minor) his or her legal representative, or (if no legal representative is available) the person authorized in writing by the subject to act on his or her behalf, or (if no such person is available) the subject's spouse or other companion in life;

(d) if the subject is a minor of under twelve years of age: without the written consent of the subject's parents (if they are the legal guardians) or legal guardian.

2. If the nature of the research is such that it can only be performed in emergency situations, thereby making it impossible for consent to be obtained in accordance with the first subsection, and if the research may be of direct benefit to the subject, research activities may be performed without consent, so long as the circumstances which make it impossible for consent to be obtained continue to prevail.

3. Before consent for a person's participation as a subject is requested, the party performing the research shall ensure that the person from whom consent is requested is informed in writing of the following:

(a) the aim, nature and duration of the research;

(b) the risks to the subject's health which could be associated with participation;

(c) the risks to the subject's health which could be associated with premature cessation of the research;

(d) the burden for the subject which could be associated with participation.

4. The information referred to in this Section, third subsection, shall be provided in such a way that there may be no reasonable doubt that it has been understood by the recipient. The recipient shall be given sufficient time to properly consider the information and to reach a reasoned decision regarding consent.

5. A party performing research in which minors under the age of twelve or persons who cannot be deemed capable of reasonably assessing their interests in the matter are involved as subjects shall ensure that such subjects are told what is to happen in a way they are able to understand.

6. The research protocol shall indicate how the requirements set out in this Section are to be met.

7. A person who, in accordance with this Section, has consented to his or her or another person's participation as a subject shall be entitled to withdraw such consent at any time, without explanation.

Paragraph 3. Liability

[Deleted.]

Paragraph 4. Liability and insurance

Section 6

1. The research shall not be conducted unless at the time of its commencement a contract of insurance has been closed covering liability for death or injury resulting from the research, up to a sum specified by order in council. Such insurance need not cover injury which is inevitable or almost inevitable, given the nature of the research.

2. Chapter 10 of Title 1 of Book 6 of the Civil Code shall apply equally to the insurer's obligation to pay compensation pursuant to this Section, first subsection, insofar as the provisions of the said Title are not in conflict with the nature of the obligation.

3. Further details of the requisite insurance shall be specified by order in council, which shall not take effect for at least eight weeks from the publication date of the Bulletin of Acts, Orders and Decrees in which it is included. Both Houses of Parliament shall be notified of the order's publication at the earliest opportunity.

4. The research protocol shall indicate how the requirements of this Section, first subsection, are to be met.

5. Any liability of the party performing the research for the death or injury of the subject shall be shared by the party conducting the research. Insofar as research activities take place at a facilitative institution, the liability referred to in this Section, first subsection, shall be shared by that institution, even if the institution does not itself conduct or perform the research.

6. The requirements of this Section, first subsection, are not applicable to national government services, institutions or companies. An aggrieved party shall have the same rights in relation to a national government service, institution or company without insurance of the kind referred to in this Section, first subsection, as the said party would otherwise have had, in accordance with this Section, in relation to an insurer.

7. Neither the party performing the research nor, if this Section, fifth subsection should apply, the party conducting the research nor the facilitative institution, shall be entitled to limit or disclaim liability for injury or death resulting from the research.

Paragraph 5. Duties of the party conducting the research

Section 7

1. The party conducting the research shall be responsible for compliance with Section 2, first and second subsections, and with Section 6.

2. Under the circumstances described in Section 6, fifth subsection, second sentence, the facilitative institution shall share responsibility for compliance with Section 2, first and second subsections.

Section 7a

The party conducting the research shall ensure that during the course of the research the subject is able to consult a doctor, who shall be named in the research protocol and shall not be involved in performing the research, for information and advice regarding the research.

Paragraph 6. Other duties of the party performing the research

Section 8

1. In the event of the research proving to be significantly less favourable to the subject than the research protocol had suggested, the party performing the research shall without delay notify the subject and the committee which was last to review the protocol in accordance with Section 2, and shall apply to the said committee for a further review. Under such circumstances, performance of the research shall be suspended until such time as continuation is approved by the committee in question, unless suspension or cessation would be prejudicial to the health of the subject.

2. The party performing the research shall similarly notify the committee referred to in this Section, first subsection, in the event of the research being prematurely terminated, indicating the reasons for its termination.

Section 9

The party performing the research shall be responsible for ensuring that the subject is provided in good time with information as specified in Section 4, fourth subsection, second sentence, and -seventh subsection, Section 5, Section 7a and Section 10, and is kept informed about the progress of the research.

Section 10

The party performing the research shall be responsible for ensuring that the private life of the subject is respected as far as possible.

Section 11

The party performing the research shall be responsible for ensuring that before research commences those whose professional assistance is required for the performance of the research are informed of its nature and aim.

Paragraph 7. The committees

Section 12

1. There shall be a central committee for medical research; it shall have at most thirteen members.

2. The members of the central committee shall include at least one doctor and persons with expertise in pharmacology, nursing, behavioural science, the law, research methodology and ethics.

3. A deputy shall be appointed for each member of the central committee.

4. The members of the central committee, including the chairperson and the deputies, shall be nominated by Our Minister and appointed by royal decree for a term not exceeding four years.

5. The members of the central committee shall appoint one or more deputy chairpersons from amongst their number.

6. Members and deputy members shall be eligible for reappointment for up to two further terms, each of up to four years. At the request of the person concerned, a member or deputy member may be relieved of his or her duties by royal decree prior to expiry of the six-year term of appointment, upon the recommendation of Our Minister.

7. Upon the recommendation of Our Minister, a member or deputy member who has not asked to be relieved of his or her duties may be relieved of those duties by royal decree prior to expiry of the six-year term of appointment, under the following circumstances:

(a) if he or she fails to discharge adequately the responsibilities associated with membership of the central committee;

(b) if he or she must be considered no longer physically or mentally fit to discharge his or her duties.

8. Members and deputy members of the central committee shall be paid attendance fees and travel and accommodation expenses, in accordance with mules made by order in council.

9. The central committee shall operate in accordance with standing orders which shall be subject to the approval of Our Minister. Changes to these standing orders shall also be subject to the approval of Our Minister. Our Minister shall withhold approval only if the standing orders may reasonably be deemed prejudicial to the proper performance of the central committee's duties.

Section 13

1. The central committee shall have a secretariat; the appointment of civil servants to, and their suspension and dismissal from the secretariat shall be undertaken by Our Minister, having heard the central committee.

2. Regarding the performance of their duties, the civil servants of the secretariat shall be answerable to the central committee alone.

Section 14

1. The central committee shall be empowered to recognize other committees, whose duty it shall be to review research protocol in accordance with the provisions of this Act, or provisions made pursuant to this Act.

2. The central committee shall not recognize a committee unless the following conditions are met:

(a) the members of the committee must include at least one doctor and persons with expertise in the law, research methodology and ethics;

(b) the committee's standing orders must make adequate provision for cooperation with other experts to enable proper review of the protocol submitted to the committee;

(c) the committee's standing orders must state the area in which the committee will be active;

(d) the committee's standing orders must properly regulate the committee's operations;

(e) there must be a reasonable expectation that the number of research protocol submitted to the committee for review will be at least the minimum specified by the central committee.

Section 15

1. Upon recognition being granted in accordance with Section 14, first subsection, the central committee shall notify Our Minister without delay.

2. Our Minister shall arrange for notice of recognition granted in accordance with Section 14, first subsection, to be given in the Government Gazette.

Section 16

A committee recognized pursuant to Section 14 shall notify the central committee in writing in the event of a change being made to the committee's standing orders.

Section 16a

1. Within six weeks of the submission of a protocol for research of the kind referred to in Section 3a, first subsection, second sentence, which research does not involve any deliberate alteration to the subject's condition,

the committee may refer the protocol to the central committee for review. Under such circumstances, the committee shall notify the party submitting the protocol of its referral.

2. The central committee shall be empowered to require that all protocol for research of a certain category of the kind referred to in the first subsection of this Section are referred to the central committee for review.

Section 16b

The committee shall be entitled to charge the party submitting a research protocol a fee to cover the cost of the review procedure.

Section 17

1. The committee shall send the central committee a copy of each decision made in accordance with Section 2, together with a copy of the protocol or a synopsis of it. The committee shall also notify the central committee of any notice submitted in accordance with Section 8, second subsection.

2. Not later than 31 March each year, the committee shall issue a report of its activities in the previous calendar year. This report shall be submitted to the central committee; copies shall be made available to the general public at cost price.

3. The committee shall co-operate with the central committee in any way which may reasonably be deemed necessary to enable the central committee to perform its duties.

Section 18

Any interested party may lodge an administrative appeal with the central committee against a decision made by the committee.

Section 19

The central committee shall monitor the activities of the other committees and shall be empowered to issue directives regarding the conduct of such activities as they carry out in accordance with this Act. Our Minister shall arrange for publication of such directives in the Government Gazette.

Section 20

1. The central committee shall withdraw its recognition of another committee under any of the following circumstances:

(a) if the committee no longer meets the recognition requirements a to d set out in Section 14, second subsection;

(b) if the committee fails to discharge adequately its responsibilities arising out of this Act;

(c) if the committee's standing orders are altered so that they may reasonably be deemed prejudicial to the proper performance of the committee's duties under this Act.

2. The central committee shall be entitled to withdraw its recognition of another committee if the number of research protocol submitted to the committee for review over the preceding three years is lower than the number referred to in Section 14, second subsection, under e.

3. The central committee shall not withdraw its recognition of another committee without first having heard that committee.

4. In the event of the central committee withdrawing its recognition of another committee, the central committee shall notify that committee in writing of its decision. Section 15, second subsection, is similarly applicable.

Section 21

Directives regarding the performance of the central committee's duties may be issued by order in council.

Section 22

1. Not later than 31 March each year, the central committee shall submit to Our Minister a report of its activities in the previous calendar year. Copies of this report shall be made available to the general public at cost price by the central committee.

2. Not less than once every four years, the central committee shall submit to Our Minister a report reviewing the central committee's performance of its duties and, if appropriate, proposing changes. Our Minister shall forward this report to the States General.

Paragraph 8. Miscellaneous provisions

Section 23

Compliance with the provisions of this Act or provisions made pursuant to this Act shall be monitored by public health inspections appointed for the purpose by Our Minister, and by the civil servants working under these inspections at the Public Health Supervisory Service.

Section 24

1. Insofar as may reasonably be deemed necessary for the fulfilment of their duties, the persons referred to in Section 23 shall be empowered to require the provision of information and the production of documents, and to make copies of such documents.

2. All parties shall have a duty to co-operate with the persons referred to in Section 23 in any way which may reasonably be deemed necessary to enable those persons to perform their duties.

Section 25

[Deleted.]

Section 26

This Act shall be applied in accordance with the national and international regulations applicable to the civil service regarding the protection of data which must be kept secret in the interest of the State or its allies.

Section 27

1. If exceptional circumstances should make it necessary, Section 14, second subsection, under a, and Section 20, first subsection, under a, may be suspended by royal decree, upon the recommendation of Our Prime Minister, in relation to committees charged with the review of protocol for research relating to protection against the conditions to which military personnel may be exposed on operational duty, insofar as such research involves military personnel as subjects.

2. Should a decree of the kind referred to in the first subsection of this Section be issued, a bill regarding the duration of the suspension shall be presented to the States General without delay.

3. In the event of the bill being withdrawn or rejected, the force of the articles referred to in the first subsection of this Section shall be restored by royal decree, upon the recommendation of Our Minister, within twenty-four hours of the withdrawal or rejection.

4. Upon the recommendation of Our Prime Minister, the force of the articles referred to in the first subsection of this Section may be restored at any time by royal decree.

5. Any decree issued pursuant to the first, third or fourth subsection of this Section shall be published in the Bulletin of Acts, Orders and Decrees or, if prompt publication by that means should not be possible, by other appropriate means.

Paragraph 9. Penal provisions

Section 28

1. Any person who intentionally or unintentionally contravenes a prohibition contained in Section 4, first subsection, shall be punished by imprisonment for a period not exceeding one year or by imposition of a fine of the fourth category.

2. Any person who fails to discharge his or her responsibility for compliance with Section 2, first or second subsection, or Section 6, or who fails to perform a duty referred to in Section 6 or the duty referred to in Section 24, shall be punished by imprisonment for a period not exceeding six months or by imposition of a fine of the fourth category. Any person who contravenes a prohibition contained in Section 3a or Section 3b, or who performs research for which no protocol has been approved, or who performs research in a manner contrary to the protocol approved for it, shall receive a similar punishment.

3. Acts or omissions punishable in accordance with the first subsection of this Section shall be deemed indictable offences; acts or omissions punishable in accordance with the second subsection of this Section shall be deemed summary offences.

Paragraph 10. Concluding provisions

Section 29

[Deleted.]

Section 29a

[Deleted.]

Section 29b

If the bill containing regulations regarding exceptional situations (Exceptional Situations Co-ordination Act, Parliamentary Documents H, 1993/94, 23 790) presented by royal message of 29 July 1994 should be enacted and come into force, the following amendments shall be made:

1. Section 27 shall be superseded by two articles worded as follows:

> "Section 27
>
> 1. Notwithstanding Section 7, first subsection, and Section 8, first subsection, of the Exceptional Situations Co-ordination Act, if exceptional circumstances should make it necessary, Section 27a may be brought into effect by royal decree, upon the recommendation of Our Prime Minister.
>
> 2. Should a decree of the kind referred to in the first subsection of this Section be issued, a bill regarding the term of the provision brought into effect by that decree shall be presented to the Lower House without delay.
>
> 3. In the event of the bill being rejected by the States General, the provision brought into effect in accordance with the first subsection of this Section shall be suspended by royal decree, upon the recommendation of Our Prime Minister, without delay.
>
> 4. The provision brought into effect in accordance with the first subsection of this Section shall be suspended by royal decree, upon the recommendation of Our Prime Minister, as soon as We judge that circumstances allow.

5. Any decree of the kind referred to in the first, third or fourth subsection of this Section shall be published in a manner specified in that decree. Any such decree shall come into force upon its publication.

6. Any decree of the kind referred to in the first, third or fourth subsection of this Section shall in any event be entered in the Bulletin of Acts, Orders and Decrees.

Section 27a

Our Minister may, with the agreement of Our Minister of Defence, suspend Section 14,second subsection, under a, and Section 20, first subsection, under a, in relation to committees charged with the review of research relating to protection against the conditions to which military personnel may be exposed on operational duty, insofar as such research involves military personnel as subjects."

2. The full stop following the words "Section 41b" in lists A and B accompanying the Exceptional Situations Co-ordination Act shall be replaced by a semicolon, after which the words "of the Medical Research Involving Human Subjects Act: Section 27a. " shall be added.

Section 30

The articles of this Act shall come into force at a point or points in time specified by royal decree, the various articles or clauses thereof may come into force at different points in time.

Section 31

This Act shall be known as the Medical Research Involving Human Subjects Act.

We order and command that this Act shall be published in the Bulletin of Acts, Orders and Decrees (Staatsblad), and that all ministerial departments, authorities, bodies and officials whom it may concern shall diligently implement it.

Done at The Hague,

The Minister of Health, Welfare and Sports

The Minister of Justice

IV. THE NETHERLANDS ANTILLES

A. Introduction to the report of the Netherlands Antilles

203. The report of the Netherlands Antilles is submitted in compliance with article 40 of the International Covenant on Civil and Political Rights, which entered into force for the entire Kingdom of the Netherlands, including the Netherlands Antilles on 11 March 1979.

204. Owing to a delay in the submission of the report of the Netherlands Antilles, part IV of this report covers the second and the third reporting periods for the Netherlands Antilles. The second period runs from September 1981 to September 1986 and the third period from September 1986 to September 1991. In a supplement (part IV.C.) an update is given up to September 1998.

205. The report includes information relating to the period when Aruba was still part of the Netherlands Antilles (i.e. until 1 January 1986). Since 1 January 1986 the Kingdom of the Netherlands includes three countries, namely the Netherlands, the Netherlands Antilles and Aruba. The Kingdom is governed by the Charter for the Kingdom ("Statuut"). The Charter is a legal instrument *sui generis* and is based on the fundamental principle that in this constitutional order they

will look after their internal interests autonomously and their common interests on a basis of equality and will accord each other reciprocal assistance.

206. Article 43 of the Charter provides that it is also the duty of each of the countries to promote observance of fundamental human rights and freedoms, legal certainty and proper administration.

207. The report of the Netherlands Antilles follows as closely as possible the guidelines laid down by the Committee in Document CCPR/C/20 of 19 August 1981, the Manual on Human Rights Reporting (United Nations Publication; Sales Nv. E. 91.111k. Man/6), and the comments of the Committee as contained in Document CCPR/C/21/Rev 1 of 19 May 1989.

B. International Covenant on Civil and Political Rights

Article 1: Right to self-determination

208. The Kingdom of the Netherlands has a constitutional monarchy and is a parliamentary democracy. The Queen is head of state and is represented in the Netherlands Antilles by a Governor. The Netherlands Antilles have an administrative structure of government and parliament at both central and island level.

209. The Government of the Netherlands Antilles (i.e. at central level) consists of the Governor and the Cabinet. The Netherlands Antilles now includes 4 island territories, each of which is autonomous as regards its own affairs. Each island therefore has an island government formed by the Lieutenant Governor and the Executive. The parliamentary body at central level is the "Staten" and at island level the Island Council. The central Parliament is elected every four years. In principle all national who have reached the age of 18 are entitled to vote and stand for election. The elections for the island councils are conducted in accordance with the same procedure as applies to the central Parliament

210. The electoral system therefore provides adequate guarantees for the right to self-determination for the Netherlands Antilles. This right was also explicitly recognised in top-level consultations between the Netherlands Antilles, the islands of the Netherlands Antilles and the Netherlands held in The Hague in October 1981. None of the countries or islands taking part in the conference opposed the exercise of the right to self-determination. Thus agreement was reached on the right of the island populations to determine their own political future independently.

211. At a subsequent Round Table Conference between the Netherlands Antilles, the islands of the Netherlands Antilles and the Netherlands held in The Hague from 7 to 12 March 1983, it was established that Aruba would exercise its right of self-determination under the terms of a special plan. Aruba acquired a "separate status", i.e. the status of fully-fledged country within the Kingdom, with effect from 1 January 1986.

212. The preamble to the Charter for the Kingdom of the Netherlands now provides as follows: "The Netherlands, the Netherlands Antilles and Aruba, noting that in 1954 the Netherlands, Surinam and the Netherlands Antilles freely expressed their will to establish a new constitutional order in the Kingdom of the Netherlands in which they will look after their internal interests autonomously and their common interests on a basis of equality and will accord each other reciprocal assistance, and resolved by mutual consent to establish the Charter for the Kingdom; noting that the ties with Surinam under Charter were terminated as of 25 November 1975 by means of an amendment to the Charter by Kingdom Act of 22 November 1975, Staatsblad No. 617 P.B.N.A. 233; considering that Aruba has freely expressed its will to accept the aforesaid constitutional order as a country for a transitional period leading to independence; have resolved by mutual consent to establish the Charter for the Kingdom as follows.'

213. During the 1983 Round Table Conference it was also agreed that it would be necessary to make certain changes to the Constitution of the Netherlands Antilles owing to the secession of Aruba from the Netherlands Antilles. Moreover, a Cooperation Agreement could also be concluded in the first half of 1985 between the Netherlands Antilles and Aruba pursuant to article 38, paragraph 1, of the Charter (now recorded in PB 1985 no. 88).

Article 2: Non-discrimination

214. The principle of equality is the foundation of our legal order, and is enshrined in article 3 of the Constitution of the Netherlands Antilles, which provides as follows: 'All who are in the territory of the Netherlands Antilles have an equal right to protection of their person and goods." Naturally, it is not only a matter of claims to protection of person and goods because the tenor of the article is that all individuals are equal before the law.

215. Article 94 of the Constitution of the Kingdom of the Netherlands, which applies to the entire Kingdom, also provides that statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties that are binding on all persons or of resolutions of international institutions. The national courts are entitled and indeed obliged to apply the international provisions, provided that they are of a self-executing nature and are therefore directly applicable in relations between government and the individual.

216. Individuals who consider that they have in some way been accorded unequal treatment and thus discriminated against may have recourse to the courts. Individuals who cannot afford the cost of bringing an action before the courts have been able to obtain full legal aid since 1955. Originally, however, the obligation of the authorities to provide full legal aid to persons charged with a criminal offence was subject to a reservation. After this reservation was abolished in 1980, these people too became entitled to full legal aid.

217. Disputes between individuals and the authorities may sometimes be referred first of all to a higher administrative body by way of appeal. As it may be assumed that none of the forms of appeal to a higher administrative body available in the Netherlands Antilles is subject to such safeguards that it can be described as a procedure which excludes application to the courts, a court always has the last word on disputes. This was the decision of the European Court of Human Rights in the Benthem case on 23 October 1985. This case dealt with appeal to the Crown in the Netherlands, which is the equivalent of appeal to a higher administrative body in the Netherlands Antilles. It was held by the European Court in this case that the Netherlands system of appeal to the Crown cannot be regarded as an independent and impartial judicial remedy.

218. The court in the Netherlands Antilles may be an ordinary court or an administrative court specially set up for this purpose.

The ordinary courts

219. If an individual considers that a government body has taken a decision which prejudices his interests under civil law in an unacceptable manner, he may institutes proceedings before the ordinary courts to have this decision overturned.

220. The ordinary courts may be involved in four different ways in settling disputes arising from acts of the authorities.

As criminal court

221. The ordinary courts take cognizance of all cases involving prosecutions which may result in the imposition of a punishment. A case instituted by the Public Prosecutions Department (Openbaar Ministerie) is intended to result in the conviction of the accused. The court must form an opinion on the extent to which the norm that has been infringed is binding. If the court concludes that the norm is not binding as it conflicts with a provision of an international treaty that is binding on all persons, the accused is acquitted. In this way the ordinary courts play an important role in monitoring the lawfulness of legislation.

As an administrative court designated in a special Act of the Netherlands Antilles

222. Examples are: article 19 of the Netherlands Antilles Islands Regulations (ERNA), under which the Court of Justice may decide on the admission of a member to the Island Council if the Council has itself failed to do so, article 11 of the Electoral Regulations, which gives the court of first instance the power to hear applications for amendments to the electoral register; section 18 of the Compulsory Purchase Act under which the court of first instance may make a compulsory purchase order and determine the compensation. Normally the courts are declared in these provisions to be competent to quash certain decisions of administrative bodies and to substitute their own decision, or to take decisions where a government body has failed or lacked the competence to do so.

As an administrative court under article 103 of the Constitution of the Netherlands Antilles

223. Article 103 provides that disputes on electoral law and other civil rights are within the jurisdiction of the ordinary courts if no other court has been designated by Act of the Netherlands Antilles. As this article has been elaborated by Act of the Netherlands Antilles, doubts have been raised in the case law as to whether it can indeed form the basis for the competence of the ordinary courts. The current case law is that since no other courts have been designated to hear this kind of case in the Netherlands Antilles, individuals should apply to the ordinary courts.

The administrative courts

224. In addition to the ordinary courts which sometimes act as administrative courts, the Netherlands Antilles also have special administrative courts. These are as follows: the Tax Tribunal, the Appeal Court for the Public Service, the Public Service Tribunal and the four tribunals that hear cases connected with the General Old Age Pension Act, the Accident Insurance Act, the Health Insurance Act and the General Widows' and Orphans' Insurance Act.

225. The function of these administrative courts is to determine the lawfulness of decisions taken under the various Acts. The grounds of review are:

- conflict with the law, including the International Covenant on Civil and Political Rights;
- conflict with the ban on abuse of power;
- conflict with the ban on arbitrariness;
- conflict with other generally recognised principles of proper administration.

Article 3: Equal rights of men and women

226. Reference should be made here to the first report in which the Human Rights Committee was informed of the existing statutory regulations incorporating the principle of non-discrimination into the legal system of the Netherlands Antilles.

227. Since mid-1990 there have been new developments in relation to the application of the non-discrimination principle. The authorities have decided to apply the principle of equal pay for equal work, subject however to the criterion of the legal support obligation. The solution chosen by the Government is therefore based on the principle of the legal obligation to provide support. This means that anyone who can show that he has a legal obligation to provide support for his family is eligible for a salary rise of 20%.

228. The Government has also decided to terminate the existing discrimination in relation to pension benefits. Anyone who has a legal obligation to maintain children and/or a spouse may pay contributions for a widow's or orphan's pension for these persons, as a result of which the relatives of a married or unmarried female public servant or an unmarried male public servant will, on the death of that public servant, be entitled to a pension (PB 1990, nos. 50 and 52). At the same time, every public servant has been given the right to permanent employment with pension entitlement, regardless of his or her sex or marital status.

229. The right of the illegitimate children of unmarried public servants to free medical treatment was introduced in 1988, thereby ending the discrimination between legitimate children born to the parties to an existing marriage and the illegitimate children, whether or not acknowledged, of unmarried public servants.

230. Article 3 of the Constitution of the Netherlands Antilles provides that: All who are in the territory of the Netherlands Antilles have an equal right to protection of their person and goods.' The national laws of the Netherlands Antilles do not, however, contain provisions which make express mention of equal rights for men and women in matters of civil and political rights.

231. In order to guarantee these rights and implement article 3 of the International Covenant on Civil and Political Rights, it was necessary to list the various measures in the light of this provision. During this exercise it was discovered that the regulations governing the legal position of public servants and the Civil Code of the Netherlands Antilles in particular contained provisions which were less favourable for women than for men

232. The Government and Parliament are therefore in full agreement that every effort must be made to ensure that women are accorded equal rights. It was for this reason that the Kingdom of the Netherlands signed the Convention on the elimination of all forms of discrimination against women in 1980, which came into effect for the entire Kingdom, including the Netherlands Antilles on 22 August 1991.

233. The Women's and Humanitarian Affairs Office was established and is closely involved in defining the policy of the Government of the Netherlands Antilles towards women and the development process in the Netherlands Antilles. The involvement of this Office takes the form of providing information, support and coordination and participating m local and international meetings. The term "women and the development process" implies the removal of laws and government measures that discriminate against women and the introduction of laws and measures giving effect to obligations arising from the ratification of international treaties and membership of international organisations. An interdepartmental advisory group was set up to assist with the implementation of these responsibilities and is presided over by the above-mentioned Office. One of the functions of the Advisory Group is to inform the Government of any legislative alterations and changes and new laws that it considers necessary.

234. The Fifth Regional ECLAC Conference on the Integration of Women into Economic and Social Development, which was held in the Netherlands Antilles from 16 to 19 September 1991, contributed to the process of promoting equality of opportunity for men and women in the Netherlands Antilles.

Reference should be made in this connection to the notes on articles 2 and 2b in part IV.B of this report.

Article 4: Restrictions on derogations from obligations under the Covenant

235. Article 137 of the Constitution of the Netherlands Antilles (Staatsblad 1955, no. 36 PB 32) provides that in order to maintain external or internal security in circumstances in which, in the event of war or threat of war or in the event of the disruption or likely disruption of internal order and peace, the interests of the Kingdom might be prejudiced, each part of the Netherlands Antilles may be declared to be in a state of war or under martial law. The manner in which such a declaration must be made and the consequences thereof are determined by Act of the Kingdom or regulations made under such an Act.

236. Paragraph 3 of this article states that provision may be made by regulation for the powers of the civil authorities in respect of public order and the police to be transferred either partly to other organs of the civil authorities or to the military authorities and how this is to be done. It also stipulates that if the powers are transferred to the military authorities, the civil authorities become subordinate to them in this respect. The same regulation also provides for exceptions to the freedom of the press under article 8 of the Constitution, and to the inviolability of the home (article 107 of the Constitution) and of correspondence (article 108 of the Constitution).

237. Article 138 also provides that the Governor of the Netherlands Antilles, who is the representative of the Kingdom, may, without prejudice to the provisions of article 137 of the Constitution, declare each part of the Netherlands Antilles to be in a state of war or under martial law in order to maintain internal security and public order. The way in which such a declaration is to be made and its consequence are to be determined by Act. Here too it is possible to derogate from the provisions concerning the freedom of the press, the right of assembly, the inviolability of the home and of correspondence.

238. In the event of war', it is also possible to derogate from article 105 of the Constitution, paragraph 1 of which provides that "No one may be deprived of his legal rights against his will". paragraph 2 reads: "The way in which disputes about the division of powers between the judiciary and other authorities are to be decided shall be regulated by Act."

239. Article 34 of the Charter for Kingdom of the Netherlands (Act of 28 October 1954, S. 503) also refers to the fact that in the event of an emergency certain statutory measures should be taken which may even entail Appointments of certain fundamental rights. This article is worded in the same way as article 137 of the Constitution of the Netherlands Antilles. It should be noted incidentally that as far as is known the provisions contained in the Constitution of the Netherlands Antilles and the Charter of the Kingdom of the Netherlands were not invoked either before or after the date on which the International Covenant came into effect for the Netherlands Antilles.

Article 5: Prohibition of narrow interpretation of the Covenant

240. The Constitution of the Netherlands Antilles contains provisions regarding civil and political rights in chapters 1, 7, 8 and 10. Since the Government of the Netherlands Antilles is bound by the obligations relating to civil and political rights contained in both European and UN conventions and it takes the view that these conventions should be viewed in their mutual context the national regulations relating to fundamental rights will find substantial support in the international provisions. An important question which arises in this connection is the effect of the international fundamental rights, in other words the nature of the relationship between the national and international provisions.

241. Under article 66 of the Constitution which applies to the entire Kingdom of the Netherlands, international provisions take precedence over national provisions. The national courts are entitled and obliged to apply the international provisions, provided that they may be deemed from their nature and wording to be self-executing in the relationship between government and individual. The operation of fundamental rights in relationships under private law is acknowledged in the case law, although it has to be admitted that case law does not recognise that fundamental rights apply directly and in full in relationships between individuals under private law. This is not to say, however, that fundamental rights have no significance in the private law relations between individuals. Such rights do, therefore, have a certain effect in relation to third parties, but it is not direct or immediate

242. The question of whether and, if so, to what extent fundamental rights may be made subject to limitations forms part of a larger problem. The Government of the Netherlands Antilles takes the view that fundamental rights may be made subject to limitations in order to protect the interests of society or the interests of other individuals. The problem is to determine the permissible extent of such limitations, bearing in mind that a broad position entails the risk that the rights may be undermined. And a narrow view may perhaps lead to conclusions which cannot be accepted for practical reasons. The Government is aware that these two positions are generally speaking mutually contradictory. The Government of the Netherlands Antilles would therefore very much welcome hearing any views which your Committee may have on this matter.

243. The national legislation in the Netherlands Antilles contains a limitation on the right of freedom of expression. Articles 143a/b/c of the Criminal Code of the Netherlands Antilles (PB1918, no. 6) prohibit discrimination on the grounds of race, religion or other belief. The justification for this limitation is that the exercise of fundamental rights should be weighed against the interests of society as a whole and the interests and fundamental rights of other individuals.

244. It is assumed in this connection that the limitations made within the scope of article 4 of the International Covenant should be regarded in their mutual context.

Article 6: Right to life

245. The Netherlands Antilles are now bound by the obligations resulting from the Sixth Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, pertaining to the abolition of the death penalty (Strasbourg, 28 April 1983).

246. Under article 1 of the Protocol no one may be sentenced to death or executed. Article 2 of the Protocol contains a provision allowing member states to include the death penalty in their national legislation for offences committed in wartime or when there is an imminent threat of war. The Criminal Code of the Netherlands Antilles contains two articles (articles 103 and 108) providing for the death penalty in the case of certain offences committed in wartime.

247. However, it is over 140 years since the last death sentence was carried out (8 March 1848). Although the death sentence was imposed on subsequent occasions (most recently in 1954 in the Sophia Case by the Court of Justice, 27 April 1954), it was always commuted to another sentence by way of pardon.

248. A Commission under the chairmanship of W.C. de la Try Ellis was appointed after 1955 to advise the Government on whether there were grounds for abolishing the death penalty in the Netherlands Antilles. Subsequently the death pena4 was abolished by Act of 28 November 1957, PB 156, except for the offences defined in article 103, paragraph 2, and article 108, paragraph 3, of the Criminal Code of the Netherlands Antilles.

249. Since a civilian who aided the enemy in time of war could not be punished in the Netherlands Antilles by a military court under military law, the Government considered it desirable to retain the death penalty in these cases in the Criminal Code. Owing to the recent abolition of the death penalty in military law, the same argument now applies in reverse (PB 1990 no. 65). As there is every reason for abolishing the penalty altogether in ordinary criminal law too, the Government proposes to do this during the revision of the Criminal Code of the Netherlands Antilles.

Article 7: Prohibition of torture

250. Article 3 of the Constitution of the Netherlands Antilles contains a basic provision which may be invoked by any person in the territory of the Netherlands Antilles in order to protect his or her person. This right is not limited by national regulations and/or measures.

The national legislation of the Netherlands Antilles does not, however, refer expressly to the terms torture or cruel, inhuman or degrading punishment. Nonetheless, the Criminal Code of the Netherlands Antilles does contain general provisions (articles 287-289) relating to offences against personal liberty and articles 300-322 relating to offences against life) which are applicable to the area covered by article 1, paragraph 1, of the Convention against torture and the present article of the International Covenant. The UN Convention against torture came into effect for the entire Kingdom on 20 January 1989. The articles in the Criminal Code referred to above specify that the relevant offences carry life sentences or determinate prison sentences of up to 20 years, depending on the nature of the offence. An attempt to commit torture or an attempt to participate in or be an accessory to acts which come within this definition in the International Covenant on Civil and Political Rights is also covered by these provisions of the Criminal Code.

251. In addition to the statutory provisions mentioned above, instructions and guidelines have also been issued to regulate police action in endeavouring to enforce the law in an acceptable manner. In the event of an increase in crime, the possibility cannot therefore be excluded that in the lawful exercise of their duties police officers will more frequently find themselves in situations in which they are forced to make use of the powers conferred on them by virtue of their office, for want of any other way of achieving the object of the law. The function of the police is regulated in the Police Regulations (PB 1962 no. 64). However, provisions are also contained in other laws such as the Criminal Code and the Code of Criminal Procedure, which define rules and procedures in detail. In the Netherlands Antilles police action can therefore be said to be legalised yet at the same time constrained by statutory rules and sanctions. Examples of these rules are the Act governing Substantive Public Service Law, the Instructions governing the Use of Force by the Police, the General Service Regulations for Police Officers and the instructions on the Use of Arms.

252. A victim of torture may bring a civil action on the basis of the unlawfulness of the act. In addition, individuals may submit a complaint to the Complaints Committees for the relevant island territories namely the Complaints Committees for the actions of police officers in Curaçao (PB 1985 no. 143) and in the Windward Islands (PB 1987 no 120).

253. Since the beginning of 1991 the remand centre has been visited at least once a week by a member of the Public Prosecutor's Office with a view to preventive action and to improving the infrastructure in order to satisfy the international commitments. This ensures that the shared responsibility of the Public Prosecutions Department for executing prison sentences is properly discharged.

254. If prisoners have a complaint about matters relating to a prison establishment, they may apply individually or collectively to a Supervisory Committee for Prisons and Remand Centres (set up by a Decree of the Netherlands Antilles containing General Measures, of 29 November 1962, PB 1962 no. 160).

255. At the suggestion of the Minister of Justice a Committee (the Römer Committee) was established by Decree of the Netherlands Antilles of 9 August 1991, no. 2, to institute an investigation into the conduct of all parts of the police force of the Netherlands Antilles towards individuals, and, if it should discover unlawful acts, to make recommendations to the Government for ensuring the proper discharge of the duties of the police force. The Government also gave instructions for an evaluation of the functioning of the Curaçao Police Complaints Committee by Decree of 12 November 1985 (ne. 25, PB 1985 no. 143).

256. The Römer Committee of Investigation has taken cognizance of a report published in 1982 by the Research and Documentation Centre (WODC) of the Netherlands Ministry of Justice, partly at the request of the then Minister for Netherlands Antillean Affairs. The report concerned a *verbatim survey* carried out in Aruba (which was then part of the Netherlands Antilles), Curaçao, Bonaire and St. Martin. There is now felt to be a need to carry out this survey again, or to establish a comparable survey that concentrates on instances of the use of force by the police.

257. By means of cooperation between the WODC and the Römer Committee, the Government wishes to obtain clear information on three matters: (a) the extent of crime; (b) the causes of the increase in crime (compared with ten years ago); (c) the extent to which force is used by the police.

258. The Government believes that the function of the police in the Netherlands Antilles is to maintain public order and to solve crime. In carrying out these duties, the police will inevitably have to use force on some occasions. The police are also authorised to do so, provided that the force is in proportion to the object for which it is used. In other words, the police's monopoly on the use of force is limited by the principles of subsidiarity and proportionality.

259. It is clear from the above that any study of the use of force or violence by the police must start with the way in which it is used operationally. The term "violence" should therefore be broadly defined, for example as all (police) acts which adversely affect the mental or physical state of individuals and which cannot be regarded as part of the lawful discharge of the duties of the police. Violence therefore consists both of excessive use of what is in principle legitimate force and of acts that constitute unlawful force from the outset.

Article 8: Prohibition of slavery

260. With reference to what was said in the first Kingdom report on article 8, it should now be noted that, pursuant to the provisions of the ILO Convention no. 105 on the abolition of forced labour, changes were made by Act of the Netherlands Antilles of 7 November 1986 (PB 1986, no 154) to certain provisions of the Criminal Code which provided that failure by a member of a ship's crew to perform a contract of employment entered into by him was punishable as desertion or refusal to obey orders. According to the Explanatory Memorandum, the change means "that deliberate acts and omissions contrary to an obligation to which the crew member is subject under a contract of employment will in future be punishable only if they endanger the safety of those on board or of the vessel or its cargo". In addition, article 404 of the Criminal Code, which provides that the master of a vessel is criminally liable if he deliberately and unlawfully absents himself from his vessel during the voyage, was redrafted.

261. In 1989 the ILO Committee of Experts made a request to the Government of the Netherlands Antilles in respect of article 405 of the Criminal Code. This article reads as follows: A crew member who, contrary to his obligations under a contract of employment, evades his duties on board a ship of the Netherlands Antilles or the Netherlands shall be liable to a term of imprisonment not exceeding one year as being guilty of desertion, if danger to the ship, those on board or the cargo was feared as a

result of the circumstances in which so acted.' The matter is presently being considered in the Netherlands Antilles

Article 9: Right to liberty and security of person

262. Reference should also be made in this connection to what was said in the previous report. Although no explicit reference is made either to the principle of liberty or to the right to security of person in the Constitution of the Netherlands Antilles, they are adequately safeguarded by articles 3 and 24, paragraph 2, of the Constitution. Personal liberty cannot be curtailed by any authority other than the legislature.

263. Article 101 of the Constitution also provides a guarantee that punishments may be imposed only by the court designated for this purpose by Act of the Netherlands Antilles. The Constitution makes no mention of what these sentences may be. This is left to the legislature. The Constitution merely provides in article 102 that forfeiture of all civil rights and confiscation of all goods are excluded as possible sentences. As far as restrictions on liberty are concerned, the legal system of the Netherlands Antilles applies pre-trial custodial measures. The most far-reaching of these measures under the law of criminal procedure entail an infringement of the right to liberty. These measures include stopping a suspect, arrest and detention for hearing, police custody and successive stages of remand in custody. They are regulated in Title 1 ("Concerning the detection of offences') of the Criminal Code of the Netherlands Antilles.

264. Deprivation of liberty is permitted only in the cases specified by law, namely: (a) pursuant to a judicial conviction; (b) on account of a failure to comply with a judicial order; (c) by way of remand in custody; (d) if necessary in order to intervene in the upbringing of minors; (e) for the purpose of isolation in the case of contagious diseases or mental illness; (f) for the purpose of extradition or expulsion.

265. As regards the second paragraph of this article, reference should be made to the relevant part of the First Report.

266. The present Criminal Code sets the duration of police custody at 4 days, with the possibility of an extension to a total of 10 days. This has been altered in the draft of the new Criminal Code for the Netherlands Antilles. Other proposed changes are connected with the desirability of supervision and the lawful use of the time during which a suspect may be placed and detained in police custody.

267. An order for police custody made by an assistant public prosecutor may remain in force for not more than 2 days, after which it may be extended by the public prosecutor for a maximum of 6 days if this is urgently necessary in the interests of the investigation. The review to be performed by the public prosecutor has therefore been brought forward by two days in the new draft.

268. The suspect must be brought before the examining magistrate as quickly as possible but no later than within 24 hours of the moment when the public prosecutor has ordered the extension of the custody. The suspect's counsel may be present at the hearing and may speak on his behalf. The obligation to bring a suspect promptly before a judge is laid down in article 5, paragraph 3, of the European Convention on Human Rights. It may be assumed that the proposed arrangement satisfies the standards for a "prompt" hearing as laid down in accordance with the judgement of the European Court of Human Rights of 22 May 1984 (NJ 1986, 507). It goes without saying that the public prosecutor may bring the suspect before a judge at an earlier stage, for example if he believes that the suspect should be remanded in custody immediately after his arrest, but he may also do so at an earlier stage of the police custody.

269. From the time that the order for police custody is made by the assistant public prosecutor, the suspect should be brought before the examining magistrate "as quickly as possible", in other words as soon as the police have processed the investigation in such a way that the examining magistrate is able to form a reasonable opinion on the basis of them. It is not necessary that the police should have gathered sufficient evidence to secure a conviction by the time that the suspect is brought before the examining magistrate. What they need to show is *prima facie* evidence for suspicion and adequate grounds for ordering police custody. If necessary, the evidence may be amplified orally by the police.

270. The shortening of the period, to which the police organisation and procedures must still be adapted, means that the character of the review by the court depends on the period that has elapsed since the arrest and the position of the investigation at the time the suspect is brought before the court, in other words on what the police have reasonably been unable to discover in the short time available. The review by the ex magistrate is negative in the sense that he assesses on the basis of the available information whether continuation of the police custody is not contrary to the interests of the investigation. If he considers that there are insufficient grounds for a continuation, the suspect must be released. Otherwise the order for police custody remains in force. The proposed arrangement therefore assumes that the assistant public prosecutor and the public prosecutor decide on the police custody and its continuation unless the examining magistrate mules otherwise. The examining magistrate takes his decision on the basis of the statutory provisions. In the first place he must assess whether the offence comes within the category of offences for which remand in custody is allowed. Thereafter it is necessary to decide during the first two days of the police custody whether there are sufficient grounds for deprivation of liberty in the interests of the investigation and, after these two days (i.e. after the extension), whether urgent grounds exist.

271. The interests of the investigation include farther interrogation of the suspect, a confrontation with witnesses, the prevention of collusion and the collection of evidence other than the suspect's statement. The need to collect evidence may cease if the suspect confesses. However, police custody may never be used as a means of extracting a confession from the suspect (or for that matter as a way of ensuring "a down payment" on the expected sentence). The purpose of police custody is to enable the public prosecutor and assistant public prosecutor to exercise their right to keep the suspect available in order to carry out the requisite investigation properly and, more particularly, to be able to assess whether the suspect should be remanded in custody. The latter means that it may be in the interests of the investigation to examine whether there are any grounds for ordering a remand in custody. It also means that if such grounds do exist the suspect must be brought before the Public Prosecutor as quickly as possible after police custody ceases to be in the interests of the investigation. Police custody for all or part of the permissible period is not obligatory as a preliminary to remand in custody.

272. Throughout the entire period of police custody the suspect is entitled to apply to a judge on his own initiative to request his release. This is entirely separate from the procedure whereby he is brought before the examining magistrate. The European Convention on Human Rights draws a distinction between the obligation of the authorities to ensure that every suspect who has been arrested or detained is brought promptly before a judge and the right of a suspect to institute proceedings by which the lawfulness of his detention is speedily decided and his release ordered if the detention is not lawful. The European Court of Human Rights held in its above mentioned judgement (NJ 1986, 507) that the meaning of paragraph 4 is independent of that of paragraph 3. This is why the new Code makes provision for a special procedure enabling a person in police custody to apply to the examining magistrate for his release. Once again, the examining magistrate orders immediate release if he considers that the deprivation of liberty is unlawful.

273. The present criminal procedure is therefore formally regulated in the current Code of Criminal Procedure (PB 1918, no. 6), but in practice the provisions are interpreted in the manner most

favourable to the suspect in view of the various international conventions which apply to the Netherlands Antilles and in anticipation of the entry into effect of the new Criminal Code.

Article 10: Treatment of persons deprived of their liberty

274. The principle underlying paragraph 1 forms the basis of the statutory rules regarding people who have been deprived of their liberty. This is because it is right that special provisions should be made for people who have been lawfully detained. Persons who have been convicted of an offence or are suspected of an offence are subject to the provisions of the Prisons Act, the Prisons Decree and the Juvenile Detention Act.

275. Article 26 of the Criminal Code of the Netherlands Antilles provides that the establishments where imprisonment or detention (i.e. a lighter form of imprisonment) is to be served must be designated by statute. This was done by the General Act of 6 October 1930 for the designation of prisons (where imprisonment or detention is served) and for the establishment of the principles of the prison system (PB 1930 no. 73, as amended). This Act distinguished between two categories of institution, namely prisons and remand centres. The former were intended for persons serving terms of civil or military imprisonment in excess of 8 months. The latter were for people serving prison sentences of 8 months or less, people sentenced to detention, persons remanded in custody, persons imprisoned for civil debt, persons under arrest if there is no room for them in police cells, and persons awaiting extradition or expulsion if their detention has been ordered by the authorities.

276. The regime of the institution - which is interpreted as meaning the entirety of rules imposed from above which apply to the prisoners and the way in which they are applied is specified in the following statutory regulations:

- the Decree of 6 February 1931 (PB 1931 no. 19) referred to in article 26 of the Criminal Code of the Netherlands Antilles (current text in PB 1958 no. 18);
- the decision of 6 May 1931 no. 594 (PB 1931 no. 30) containing the regulations for the prison and the remand centres (current text in PB 1958 no. 19);
- the Decree of 29 November 1962 containing general measures relating to the Supervisory Committee for the Prison and the Remand Centres (PB 1962 no. 160).

277. Life in the institutions where the prisoners are kept is governed by this body of regulations. They cover a wide range of subjects including accommodation (in community or segregated), work, relaxation, prison visits, correspondence, medical and social facilities, sport and outdoor exercise, and disciplinary punishments.

278. Penal establishments are located in three of the five island territories of the Netherlands Antilles. The prison and remand centre in Curaçao and St. Martin are in the same building, but the remand centre is in a separate wing. This is in accordance with article 23 of the Criminal Code of the Netherlands Antilles, paragraph 1 of which provides that "Imprisonment and detention may be served in the same institution, provided that they are served in separate wings."

279. The prison and remand centre have several wings: a juvenile wing for prisoners aged 16-21; a remand wing for persons awaiting trial; a wing for persons serving short sentences (up to 9 months); the most recent addition is the Forensic Observation and Counselling Wing (FOBA), which was officially opened on 2 March 1990. This is subdivided into two sections, namely an observation section with 5 cells and a counselling section with 9 cells. All the FOBA cells are 1-person cells. The project is intended to have a positive effect on the atmosphere of the prison, which is considered to be of importance to the inmates. The principle adopted by FOBA is that the patient should be out of the cell as much as possible and should be kept occupied in the most worthwhile way possible in order to

prevent regression and aggression. The annual report for 1990 shows that there were 35 admissions in that year.

The following table provides a survey of where the patients went after being discharged from the FOBA:

Discharged to:	
Prison	11
Home	8
Capriles Clinic	4
Half-way house	2
Still in FOBA on 1 Jan. 1991	10

Source: 1990 Annual Report, Forensic Observation and Counselling Department, FOBA/ANTIAS

280. The abovementioned General Act of 6 October 1930 contains more than a designation of the penal institutions. It also states that the prison and remand centre in Curaçao are managed by a director. On the other islands there is a head who is accountable to this director.

281. The instructions for these officials are drawn up by the Minister of Justice. The Act also provides that the staff of the prison and remand centre are appointed, suspended and dismissed by the Governor. Sections 9, 10 and 11 of the Act specify the various categories of prisoner who must be kept separate from one another. Men and women may never be placed in the same room or area and the same goes for remand prisoners and convicted prisoners. Convicted children are kept separate from adults in the prisons.

282. The prisoners are divided by the director into categories, mainly on the basis of their past record, their behaviour and the offence for which they have been convicted. Wherever possible, account is taken of the age and educational level of the prisoner as well as of the duration of the sentence, everything being taken in its mutual context.

283. If the content of the Act of 6 October 1930 (PB 1930 no. 73), as amended, is assessed by reference to the principles of modern penology, it can be seen that the Act, which sets out the principles underlying the prison system in the Netherlands Antilles, is outdated. This is why a Bill to revise the law on these principles was recently presented to Parliament.

284. The Act on juvenile detention contains principles and regulations relating to measures in respect of young people. Male minors may be placed "at the disposal of the Government" or taken into care either under the criminal law (pursuant to article 41 of the Criminal Code) or under civil law (under article 347 of the Civil Code of the Netherlands Antilles).

285. The Netherlands Antilles has a single penal institution for juveniles. This is the Government Educational Home (GOG) which is operated by the Government of the Netherlands Antilles and consists of 5 open pavilions and 1 closed wing. The institution can hold a total of 80 juveniles. Application for a juvenile to be admitted to the Educational Home may be made to the Guardianship Council by both authorities and individuals who consider that such an admission is required as matter of urgency. The Council then investigates the necessity of admission to the Educational Home. If the Council concludes that admission is the best course of action, it must make a documented and reasoned application to the Juvenile Court for admission.

286. As far as education and upbringing is concerned, every attempt is made to place the inmates in external schools. Where this is not possible, the Educational Home offers both individual primary education and individual technical education.

287. On the basis of the findings during the observation period the Juvenile Court may order definite admission to the Educational Home (under article 356 of the Civil Code of the Netherlands Antilles). The duration of the admission is set at not more than one year and may be extended by the Juvenile Court for a year at a time or shortened at any time. A "definite" admission of this kind means that the Educational Home takes over responsibility for the upbringing of the child from its parents. It goes without saying that the upbringing, education and rehabilitation of boys of such a critical age is a heavy responsibility, particularly since they are often of a very difficult disposition and have serious behavioural problems that require expert help. The teaching staff therefore have to satisfy strict requirements as regards both their educational background and their personality.

Article 11: Prohibition of detention for inability to fulfil a contractual obligation

288. Reference should be made in this connection to the First Report. What is mentioned in the Aruban report in this region applies equally to the Netherlands Antilles.

Article 12: Right to leave one's country

289. Reference should be made here to the First Report.

Article 13: Prohibition of expulsion without legal guarantees

290. The Act on admission and expulsion of 24 April 1962 (PB 1962 no. 60) provides the basis for the present regulations governing aliens. Over the years the law has been changed on various occasions, most recently by Act of 17 July 1986 (PB 1986 no. 96). Further regulations were laid down by the Decree of 17 January 1973 containing general measures (Admission Decree).

291. The basic principle of the 1962 Act is that no one may be admitted to the Netherlands Antilles without a residence or temporary residence permit. Permits may be granted for a determinate or indeterminate period pursuant to section 6, subsections 1-3, of the Act. The granting, refusal or cancellation of a permit is effected by or on behalf of the Minister of Justice.

292. A permit may be granted subject to certain conditions such as the practice of a particular profession or employment with a particular employer (under section 6 of the 1962 Act and article 3 et seq. of the Admission Decree). These conditions may not be altered to the detriment of the permit holder during the validity of the permit. If the authorities wish to make an alteration to the detriment of the permit holder, the old permit must first be cancelled and a new permit granted. In this way it is assured that the person concerned can appeal to a higher administrative body (Court of Justice, 13 March 1984, case concerning a domestic servant who lived in). Admission for residence or temporary residence ends *inter alia* when the person concerned leaves the Netherlands Antilles or resides outside the Netherlands Antilles for a continuous period of more than a year (except, according to the Joint Court of Justice, in the case of force majeure, 21 May 1991, case of a management permit for Aruba) or as a result of cancellation of the residence permit or of expulsion pursuant to section 12 of the 1962 Act.

293. Section 15 of the 1962 Act contains a general provision on expulsion. The spirit of this section is entirely in accordance with this provision of the International Covenant.

294. The authorities have two possible ways of enforcing the law on aliens: they may either expel or deport people who are present in the territory of the Netherlands Antilles illegally. However, the difference between these two powers is vague.

295. The power of expulsion pursuant to an order of the Procurator General may be used in the case of persons who were formerly authorised to reside in the Netherlands Antilles and who do not leave despite being given notice to do so after their right of residence bas terminated. It may also be used in respect of persons whose admission could not be refused but whose stay is not considered desirable on the grounds of public morals, public order or public safety.

296. Deportation is used mainly in the case of people who have entered the Netherlands Antilles illegally. This power is exercised by the Lieutenant Governor. Unlike expulsion, deportation may be regarded as a measure for preserving order. Expulsion, however, should be seen as a form of coercion in the context of the ordinary policy on admissions and expulsions. This is because the possibility exists to appeal to a higher administrative body against an order for expulsion and/or an order for detention in custody pending expulsion. Such appeals are regulated in sections 17 and 18 of the 1962 Act.

297. It should be noted for the record that the Joint Court of Justice held on 20 December 1988 that detention in custody for the purpose of deportation or expulsion passes the test of article 5, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms since interim injunction proceedings provide people who have been placed in detention pending deportation with every opportunity to apply to the civil courts without delay to have the legality of the detention checked. This part of the judgement was upheld by the Supreme Court of the Netherlands on 21 December 1990.

Article 14: Entitlement to a fair and public trial

298. This article sets out the principles of a fair trial. Reference should therefore be made to the contents of the First Report.

299. With regard to paragraph 1 it should be noted that justice is pronounced in the name of the Queen in the Netherlands Antilles, pursuant to article 97 of the Constitution of the Netherlands Antilles. This means that under the articles in Part 2 of the Constitution of the Netherlands Antilles the President and the members of the Court of Justice are appointed and dismissed by the Queen.

300. The judiciary takes cognizance of all disputes of a civil nature. Pursuant to article 101 of the Constitution of the Netherlands Antilles no prosecution for a criminal offence may be brought before a court other than the court designated by Act of the Netherlands Antilles and in the manner determined by Act of the Netherlands Antilles.

301. Under article 104 of the Constitution, all judgements should contain a statement of the grounds on which they were given and, in criminal cases, a statement of the articles of the statutory regulations on which the conviction is based. The judgements must be pronounced in open court. Where the Public Prosecutions Department brings a case which is intended to result in the conviction of the accused, the court must determine whether the norm that has been infringed is binding. If the court comes to the conclusion that the regulation concerned is not binding, for example because it is contrary to a provision of an international convention that is binding on all persons, the accused must be acquitted. In this way, the ordinary courts play an important role in reviewing the lawfulness of legislation. Fundamental rights are to a large extent enforced in this way in the Netherlands Antilles.

302. The basic principle of the law in general and of the criminal law in particular is contained in article 1, paragraph 1, of the Criminal Code of the Netherlands Antilles: "No offence is punishable

unless it was an offence under the law at the time it was committed." In other words, the act of which the defendant is accused must constitute a criminal offence if the court is to be able to convict.

303. Article 50 of the code of Criminal Procedure of the Netherlands Antilles provides that a person will be treated as a suspect if there is a reasonable suspicion from facts or circumstances that he is guilty of a criminal offence. It follows from article 74 of the Code of Criminal Procedure that "if there is not sufficient indication regarding the nature of the offence, the commission of the offence or the guilt of the suspect, he (the judge) must either refuse permission to prosecute and acquit the defendant or order the continuation of the preliminary investigation".

304. As regards the different rights included in paragraph 3:

- part (a): pursuant to article 62 of the Code of Criminal Procedure of the Netherlands Antilles, the examining magistrate is empowered to appoint an interpreter in order to inform the suspect of the nature and cause of the charge against him. The interpreter also assists any witnesses who may be called;
- part (b): pursuant to articles 50 bis, 50 ter and 50 sexies of the Code of Criminal Procedure of the Netherlands Antilles, the suspect is entitled to be assisted by one or more counsel of his own choosing. Counsel has unrestricted access to the suspect, and may talk to the suspect alone and correspond with him without the contents of the letters being read by other persons;
- part (c): explained previously in relation to article 9 of the International Covenant; parts (d)/(e)/(f): similar provisions are contained in Titles 2 and 4 respectively of the Code of Criminal Procedure of the Netherlands Antilles;
- part (g): at the trial the court must be convinced by certain lawful evidence (under article 302 of the Code of Criminal Procedure) that the defendant has committed the offence with which he is charged.

305. This is the negative, statutory system of evidence: statutory because certain evidence designated by law must be present pursuant to article 302 of the Code of Criminal Procedure of the Netherlands Antilles; negative because the court need not yet convict if it has not been convinced of the guilt, pursuant to article 301 of the Code of Criminal Procedure of the Netherlands Antilles.

306. It is a matter not of the formal but of the substantive truth. By far the most important form of evidence in criminal cases in the Netherlands Antilles is a witness statement or deposition. Witnesses may be heard and the examining magistrate may compel the attendance of a witness by means of special statutory forms of coercion. All this shows how much importance is attached by the legislature in the Netherlands Antilles to witness statements as evidence. However, there are no provisions which make it possible for the forms of coercion referred to above to be used in order to compel a suspect to testify against himself.

307. As regards paragraph 4, reference should be made to article 38, paragraph 2, in conjunction with article 67 of the Code of Criminal Procedure of the Netherlands Antilles.

308. Title 6 of the Code of Criminal Procedure of the Netherlands Antilles contains provisions for appealing against judgements given by courts of first instance (article 216 et seq.). The highest court in the Netherlands Antilles is the Joint Court of Justice for the Netherlands Antilles and Aruba.

309. Article 1 of the Cassation Regulations for the Netherlands Antilles (PB 1961 no.42) provided that as regards civil and criminal cases in the Netherlands Antilles, the Supreme Court of the Netherlands, save where provided otherwise in a Kingdom Act, takes cognizance of appeals in cassation instituted either by the parties or "in the interests of the law" by the Procurator General at the

Supreme Court in corresponding cases, in a corresponding manner and with corresponding consequences in law.

310. The main aim of cassation is to guarantee uniformity in the administration of justice in the Kingdom of the Netherlands. In other words, the object of cassation proceedings is to allow the highest court in the Kingdom (i.e. the Supreme Court) to draw up rules which cover not only the case referred to it but also a large number of other cases.

311. Title 3 of the Code of Criminal Procedure of the Netherlands Antilles ("Concerning compensation for custody wrongly served") contains provisions governing the right to compensation where a person has been wrongly convicted owing to a miscarriage of justice, as referred to in paragraph 6 of article 14.

312. As regards the *ne bis in idem* principle contained in paragraph 7, the reservation made by the Kingdom also applies to the Netherlands Antilles.

Article 15: Principle of nulla poena sine preavia lege poenali

313. It should be noted that it was wrongly stated in the First Report that the *nulle poena sine praevia lege poenali* principle as contained in this article was included in the Code of Criminal Procedure of the Netherlands Antilles. The relevant principle is in fact contained in article 1 of the Criminal Code of the Netherlands Antilles, the text of which reads as follows:
"No offence is punishable unless it was an offence under the law at the time it was committed. If there is a change in the law after the offence has been committed, the most favourable provisions shall be applied to the suspect.'

Article 16: Right to recognition as a person before the law

314. In addition to what was said in this respect in the First Report, it should be noted not only that the legal system in the Netherlands Antilles recognises every individual as a person before the law and confers on every individual the capacity to exercise rights and enter into obligations but also that the Civil Code of the Netherlands Antilles confers on an unborn child the status of "person before the law" whenever this is in the interest of the child. (See also under article 24.)

315. The First Report discussed article 54 of the Constitution of the Netherlands Antilles. This article of the Constitution provides that members of Parliament lose their seat if they lose the free enjoyment of their civil rights, which is contrary to both article 102 of the Constitution and article 16 of the International Covenant. However, no amendments have yet been made in this connections It should be noted for the record that article 54 of the Constitution has never been applied and should be regarded as one of the very outdated provisions of the Constitution of the Netherlands Antilles.

Article 17: Right to privacy

316. Reference should be made to the First Report as regards the right to privacy contained in this article. The Constitution of the Netherlands Antilles dates from 1954 and was revised in 1968. The present text contains no general provision regarding the privacy principle. Articles 107 and 108 provide protection against interference with the home and correspondence respectively. The right to protection against interference with correspondence in the Netherlands Antilles applies only to letters which are delivered by the postal service.

317. Privacy protection is also regulated in other national laws. For example, articles 144 and 368 of the Criminal Code provide that unlawfully entering a dwelling against the will of the occupant is a criminal offence. Article 207 of the Criminal Code states that a public servant who unlawfully

interferes with correspondence is guilty of an offence. There is currently a Bill before Parliament (Bill to amend the Code of Criminal Procedure of the Netherlands Antilles, Parliament of the Netherlands Antilles, 1990-1991 session, Bill no. 2 and no. 3) to extend the offence of unlawful interference with correspondence to any person who is guilty of such an act.

318. The Criminal Code lacks any modern provisions to prevent the use of advanced technology to tap telephones and take intrusive photographs. Fortunately, however, a Bill to regulate this was presented during the 1990-1991 session. It also provides that unlawfully obtaining data from a telecommunications infrastructure is a criminal offence. The Explanatory Memorandum shows that the term "telecommunications infrastructure" includes telex and telefax. One of the reasons for these provisions was the need to combat crime and in particular drug trafficking. Rules were considered necessary which would allow telephones and other means of communication to be tapped for the purpose of a criminal investigation yet at the same time impose a general prohibition.

319. The Government believes, however, that it is rather illogical to create a special criminal offence of tapping telephone calls yet not introduce a general provision. As the law stands at present, tapping and recording telephone calls is not a criminal offence under any general Act currently in force in the Netherlands Antilles.

320. The Bill will be a further step in the right direction for the protection of privacy in the legislation of the Netherlands Antilles. The present Criminal Code of the Netherlands Antilles not only protects the aspects of privacy referred to above but also makes it a criminal offence to violate a professional or official duty of secrecy (article 285). If information is passed on contrary to this duty of secrecy, this may therefore be punished under the criminal law.

321. Like the Constitution, the Civil Code of the Netherlands Antilles does not contain any articles which specifically protect privacy. The protection of privacy under the civil law can be based here on article 1382 of the Civil Code of the Netherlands Antilles (action in tort). It should be pointed out in this connections however, that owing to a ruling of the Supreme Court in its judgement of 9 January 1987 (AB 1987 no. 231) article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (in force for the entire Kingdom) also applies to relations between individuals. In principle, therefore, an infringement of this right constitutes a tort within the meaning of article 1382 of the Civil Code of the Netherlands Antilles.

322. Other specific Acts which contain protective provisions are: the 1913 Copyright Act (PB 1913 no. 3, amended by PB 1975 no. 70); the 1968 Act governing Justice System Documentation and certificates of good behaviour (PB 1968 no. 213).

Article 18: Freedom of religion and belief

323. Freedom of thought, conscience and religion is regulated in articles 123-127 of the Constitution of the Netherlands Antilles.

324. Freedom of thought is understood to comprise:

- the freedom of any person to worship in accordance with his conscience;
- the freedom of parents to raise their children in the religion of their choosing;
- the freedom of any person to change his religion;
- the freedom to preach, teach, publish, instruct and to perform social and charitable work and to round organisations and to acquire and hold possessions for these purposes.

325. Article 123, paragraph 2, provides that this freedom is "subject to the protection of society and its members against infringement of the criminal law". Another constraint is contained in article 125,

which reads as follows: "The Governor shall ensure that all religions associations and communities keep within the bounds of obedience and abide by the statutory provisions and the prescribed powers". Clearly, therefore, this freedom is subject to external constraints. It follows that freedom of religion does not imply that a person is free to assess the law by reference to his religions beliefs and not to observe it if he finds that it conflicts with these beliefs.

326. The essence of freedom of religion therefore lies in the provision that the right to manifest one's religion may not be subject to restrictions of a political, economic or social nature imposed by laws or administrative regulations. The right to manifest one's religion may not be subject to regulation if this would thereby limit such manifestation. In other words, this article of the Covenant gives precedence to the right to freedom of religion, provided that it may be made subject by statute to restrictions in the interests of public safety, order and morals.

327. Article 70 of the Decree of 6 February 1931 (PB 1958 no. 18) provides that those in charge of a penal establishment should arrange for religions services to be conducted for the prisoners. The majority of the population are practising Roman Catholics. Once a week both a Roman Catholic and a Protestant service are conducted by clergymen who work part time for the institutions. The prisoners are allowed to attend the service of their faith.

328. In addition to attending church services, prisoners may also receive religions instruction and, if desired, attend bible classes, pursuant to article 71 of the Decree of 5 February 1931 (PB 1958 no. 18).

Article 19: Freedom of expression

329. Reference should be made in this connection to the First Report. It should be added that article 7 of the Decree of 15 October 1955 (PB 1955 no. 115) implementing section 2 of the Telegraph and Telephone Act of 1909 was revoked by the Decree of 27 March containing general measures. This means- that communications, speeches and other radio programmes are no longer subject to the restriction. The above provision is now in accordance with this article of the Covenant.

Article 20: Prohibition of war propaganda

330. Reference should be made in this connection to the First Report. The prohibition of advocacy of discrimination as contained in the second paragraph of this article has not yet been incorporated in national legislation. The Government is fully aware of the need to draft the required legislation in order to comply with this provision of the Covenant. Amendment of national legislation to take account of this prohibition can take place during the overall revision of the Criminal Code of the Netherlands Antilles.

Article 21: Right of assembly

331. The right of peaceful assembly is implicitly regulated by article 10 of the Constitution of the Netherlands Antilles. This provides that the exercise of the right of assembly and gathering may be made subject to regulation and restriction by statute in the interests of public order, morals or health. It follows from this provision that the right of assembly is recognised in principle, although it is not stated expressly and may be restricted in the public interest.

332. The Act to which article 10 of the Constitution refers is the Act of the Netherlands Antilles of 22 June 1933 containing provisions concerning the exercise of the right of assembly (PB 1933 no. 54). This Act starts with a general prohibition on holding, leading, convening, organising, attending and taking part in a public meeting for the purpose of common debate in the open air and on giving speeches in the open air, save where a permit has been given by the local Police chief.

Article 22: Freedom of association

333. It was stated in the First Report that the policy of the authorities is in principle that everyone should have the right to join an association or trade union. This is also provided for in article 10 of the Constitution of the Netherlands Antilles. Reference should also be made to what was said above in relation to the right of assembly.

334. The Netherlands Antilles have numerous organisations and associations of which the various groups in society form part. Employers and employees also have their own organisations. It is thought that there are 20 trades unions.

335. It is worth pointing out with regard to trades unions that there is an important role for the authorities in promoting industrial peace. In the event of an industrial dispute, the conciliation officer on the relevant island can be called in under section 3 of the Employment Disputes Act (PB 1946 no. 119, as subsequently amended). This conciliation officer may order the employer(s) or employees' association involved in the dispute or the workers or the officials of their trades union to appear before him in order to provide information and thus to help bring about a peaceful settlement of the dispute.

336. As the Netherlands Antilles have a multi-party system, the country has several political parties. There are also several organisations that are active in the field of human rights, including a section of Amnesty International, the non-governmental Human Rights Committee and, on the various islands, women's organisations. A number of these women's organisations work closely with the authorities and act as advisory bodies in respect of government policy on the subject of women and development.

Article 23: Protection of family

337. Reference should be made in this connection to the First Report.

Article 24: Protection of the child

338. This article not only bans discrimination but also provides that every child has the right to measures of protection on the part of his family, society and the State to which the child belongs.

339. Various amendments were made to the Civil Code (PB 1985 no. 117) as a result of the judgement of the Court of Justice of 14 December 1982, in order to abolish the distinction between legitimate and illegitimate descent On the basis of the judgement of the European Court of Human Rights of 13 June 1979 (NJ 1980 no. 462) in the case of Paula and Alexandra Marckx v. Belgium and following the judgement of the Netherlands Supreme Court of 18 January 1980 (NJ 190 no. 463), the Court of Justice held that no distinction may be made for the purpose of the law of inheritance between an illegitimate and acknowledged child of a testator and his legitimate children. This ruling was based on articles 8 and 14 of the European Convention for the Protection of human Rights and Fundamental Freedoms and on article 1 of Protocol 1 to the Convention. According to the judgements cited above, articles 8 and 14 of the European Convention prohibit discrimination between legitimate and illegitimate children in inheritance law.

340. The Joint Court of Justice held that the courts of the Netherlands Antilles too were bound by the judgement of the European Court of Human Rights. It went on to hold that there was also a trend in the Netherlands Antilles towards more equal treatment of legitimate and illegitimate children. In 1985 the legislature abolished the distinction between legitimate and illegitimate children in relation to Inheritance law in the Civil Code. However, not every distinction has been abolished. Illegitimate children who have not been acknowledged were still not covered by the equal rights provision. This applied only to illegitimate children who had been acknowledged by the father. The reason why the

distinction has not been abolished completely was the frequent difficulty of proving paternity, especially after the death of the testator.

341. Shortly after the introduction of this amendment, an illegitimate child who had not been acknowledged complained about the new distinction that had been introduced by the Civil Code. The plaintiff claimed the same rights in an inheritance as the legitimate children of the testator, partly because he had taken part in the same form of family life with his father as the legitimate children. The court at first instance granted the application on the ground of three circumstances, namely: the Marckx judgement gave no ruling on the position of illegitimate children who had not been acknowledged; the plaintiff had claimed his share of the estate within a reasonable time after the death of the testator; it had been shown from the words and acts of the deceased that he was the father (GEA/NA 11 May 1987 and 23 November 1987).

342. However, the Joint Court of Justice ruled differently. The Court held (GHVJ, 22 November 1988; GHVJ 26/2/1991 judgement in 1991/44) that there were sufficient grounds for finding that the choice made by the legislature was not in conflict with the international treaties (European Convention and International Covenant). This is not to say that the Joint Court regarded this choice as the best solution. But it considered that even if a judicial body believed that a more balanced arrangement was possible, this was not in itself a reason for setting aside the existing arrangement as being in conflict with the European Convention and International Covenant. Accordingly, the Joint court merely checked formal compliance with the treaties. The issue involved in this inheritance case was of great importance in the Netherlands Antilles in view of the traditionally high percentage of illegitimate children in the country.

343. The legislation of the Netherlands Antilles also provides protection for the unborn child. Article 1 of the Civil Code stipulates that "the child with which a woman is pregnant shall, whenever this is in its interest, be treated as having already been born". Under paragraph 2 of this article, a birth should be registered with the Registry of Births, Deaths and Marriages within five days of the birth. Article 5 of the Civil Code provides that registers of births should be kept on all the islands of the Netherlands Antilles. Whereas a birth should in principle be registered by the father, if he is absent it may be done by the mother or by a person who was present at the child's birth.

344. The right to acquire a nationality as referred to in paragraph 3 of article 24 of the International Covenant is regulated in the Kingdom of the Netherlands (and hence in the Netherlands Antilles too) by the Netherlands Nationality Act. The question of who acquires Netherlands nationality is therefore determined in the first instance by the principle of descent

Article 25: Right to take part in public affairs

345. In addition to what was said in the First Report, it should be noted that in 1983 (PB 1983 no. 22) the Government revoked the discriminatory sections in the Act governing Substantive Public Service Law. The sections in question were section 5, subsection 3 (e), section 6, subsections 3 and 4, and sections 95 and 96 which provided that a female public servant who cohabited as a married woman or common law wife would be honourably discharged.

346. Previously it had also been provided that female public servants could hold only temporary posts in public service. Once the above-mentioned sections were revoked, married women and common law wives were officially allowed to take up permanent posts in public service .

347. In view of the above-mentioned developments, it should be noted that the reservation made by the Netherlands Antilles with regard to article 25 (c) of the International Covenant was withdrawn by the Kingdom in December 1983.

Article 26: Prohibition of discrimination

348. The public service tribunals in the Netherlands Antilles have held on various occasions since 1984 that the public service law of the Netherlands Antilles conflicts in some respects with article 26 of the International Covenant. The regulations governing public service law (contained in the Act governing Substantive Public Service Law) contain several instances of discrimination:

- married women are treated worse than married men;
- unmarried men are treated worse than married men;
- married women are treated worse than women who have been married;
- single parents (men or women) who have remained unmarried are treated worse than single parents (men or women) who have been married;
- illegitimate (natural) children are treated worse than legitimate or legitimated children;
- children who have been acknowledged are treated worse than legitimate or legitimated children.

349. Below is a discussion of the most relevant cases in which a tribunal held that there was a conflict with the International Covenant and the effect of the judgements on the rules which are at odds with the International Covenant.

Inequality in salaries, child allowance and breadwinner's allowance

350. In the case of Shaw v. the Island Territory of St. Eustatius of 30 August 1984 (Tijdschrift voor Antilliaans recht (TAR) 1984, p. 23 1), the Antillean tribunal held for the first time that article 26 of the International Covenant was self-executing. The tribunal also held that a pay scheme under which a married woman received around 20% less than a married man for comparable work was discriminatory and, to this extent, not binding. According to the tribunal, it might be necessary to completely revise the pay structure in order to end the discrimination.

351. On appeal the Appeal Court for the Public Service upheld the above-mentioned judgement, while expanding and improving the grounds of the decision. The Appeal Court gave the following reasons:

- discrimination exists only if no objective or reasonable justification can be given for a difference;
- it may be inferred from the revocation in 1982 of section 5, subsection 3 (e), and sections 95 and 96 of the Act governing Substantive Public Service Law in which a female public servant was accorded worse treatment than her male counterparts, that neither the Government nor Parliament saw any socio-cultural, technical or legal objections to revocation of the sections;
- accession to the International Covenant indicated a desire to eliminate all forms of discrimination;
- the self-executing nature of the International Covenant entitles individuals to plea the Covenant when fighting discrimination;
- the courts of the Netherlands Antilles may review national legislation by reference to the International Covenant.

352. The Appeal Court left it to the Island Territory of St. Eustatius to abolish the inequality in the treatment of married male and married female public servants within a reasonable period. The Appeal Court did not itself correct the treatment as there were various ways in which equality could be achieved and it left the choice to the authorities (Appeal Court for Public Service Cases, 20 December 1984, TAR 1985 p. 140).

353. Three years later the tribunal itself corrected the inequality as it felt that the reasonable period allowed to the legislature in 1984 had long since elapsed. It also held that the Government of the Netherlands Antilles should bear the financial consequences of the termination of the financially advantageous discriminatory treatment. Although it was true that the financial consequences might be serious, it could not be right that a lack of financial means to comply with an obligation would serve to mitigate or even negate the obligation.

354. The tribunal also indicated that the proposed pay scheme which was to come into effect on 1 May 1988 did not in its view comply with the International Covenant. The scheme in question provided that each married public servant would in the future receive the salary for unmarried persons plus a personal allowance amounting to the difference between the old and the new salary for married persons at the time of implementation. The allowance would continue to be paid until the person concerned left the public service. New personnel joining the public service and public servants marrying after the date on which the scheme came into effect would not receive the allowance.

355. As an *obiter dictum,* the tribunal expressed the following opinion with regard to the salary scheme which was to come into effect on 1 May 1998: 'The allowance thus created once again discriminates, albeit in a different way, between married male and female public servants in comparable positions who joined the public service before 1 May 1988. In this way it takes away with one hand what it has given with the other. " The tribunal held that the new scheme was not binding because of article 26 of the International Covenant, which "required not so much equal remuneration as, more generally, equal treatment of men and women". This would cover an allowance of the kind referred to here (Appeal Court for Public Service Cases, 5 May 1988 (TAR 1988 p. 122».

356. The Island Territory of St. Eustatius was unwilling to accept this judgement and appealed against it. The Appeal Court upheld the decision of the tribunal and improved the grounds of the decision. The Appeal Court based its decision on the fact that the authorities had always contended that the 20% extra salary received by married men should be regarded as a form of breadwinner's allowance since they evidently assumed that it would in principle be the husband who was the breadwinner in a family, although this is by no means always the case. There appears to be no good reason why the wife should not receive the allowance in cases where she is the breadwinner.

357. The Appeal Court also held that it had been established in the present case that the respondent Shaw and her husband constituted a household in which she should be designated as the breadwinner. Her husband did not work and received a pension. Moreover, the respondent had a child from her previous marriage who was maintained fully at her expense. The Appeal Court accordingly concluded that the respondent was entitled in this case to claim the salary that was paid to her male colleagues in comparable positions (judgement of 24 November 1988 of the Appeal Court for the Public Service).

358. Another important case that dealt with this problem was the civil case between Maria Weverink and the board of a Roman Catholic school. The board successfully applied for an indemnity from the Island Territory of Curaçao, which would take effect if Weverink's claim were allowed. Curaçao would then have to make available to the school board the requisite funds to cover the plaintiff's claim. Weverink, who had never been married, applied for an order against the school board that she was entitled to receive for her two minor, illegitimate children the child and breadwinner's allowance which was received by men in the employ of the school board who were or had been married. Weverink pleaded article 14 of the European Convention and article 26 of the International Covenant.

359. She contended that sections 29, 30 and 31 of the Act governing Substantive Public Service Law, which were also applicable to her, conflicted with the relevant treaties. These sections discriminate between married and unmarried persons. Once again, the tribunal held that article 26 of the International Covenant was self-executing and cited the Shaw case. The tribunal held in this connection that: 'The present case involves a difference in pay between married and unmarried

teachers. Since article 26 of the International Covenant also prohibits discrimination on the basis of status which includes marital status it must be contended that sections 29, 30 and 31 of the Act governing Substantive Public Service Law and the relevant provisions of the 1971 Pay Scheme for Teaching Staff in Curaçao in so far as this implemented the above-mentioned sections 29, 30 and 3 1, conflicted with the article of the Covenant and should therefore be revoked. " It was no longer a question here of discrimination between married male and female employees but instead concerned discrimination between persons on the ground of married and unmarried persons.

360. The court held that Weverink was entitled in law to receive the same child and breadwinner's allowance for her minor children as applied to employees of the school board who were or had been married. The court also held in this case that article 26 of the International Covenant can be invoked in disputes between individuals, in other words that it has effect in relation to third parties (Maria Weverink v. the Island Territory of Curaçao, court of first instance, 9 May 1988 (TAR 1988 p. 122)).

361. The same question was also dealt with in the case of Glenda Hansen v. the Executive Authority of Curaçao of 5 May 1989 before the Public Service Tribunal. As a public servant and as a divorcee who had not remarried, Hansen received a salary for a married person plus child allowance. After she remarried, the Executive Authority directed that her salary should be cut by around 20% and her child allowance cancelled. The tribunal held that it had already been decided on various occasions that the distinction in the present pay scheme between the remuneration of married female employees and married male employees was discriminatory, in any event if the married woman was also the breadwinner. As Hansen was the breadwinner she was held to be in the right. The tribunal once again cited the Shaw case.

362. The Appeal Court for the Public Service held in the case of Ansehna v. the Governor of the Netherlands Antilles in 1989 that it is possible to find reasonable and objective grounds that justify a distinction in salary between an unmarried public servant who has no legal obligation to provide support and one who does have such an obligation. In this way it ratified several judgements of the public service tribunal on this matter. In these cases the tribunal had taken the view that a system of remuneration in which a difference in salary was linked to whether or not a support obligation existed could not be regarded as discriminatory.

363. It may be inferred from the cases discussed above that wherever the pay scheme results in unequal treatment of married female public servants and their married male colleagues this conflicts with article 26 of the international covenant.

364. There is also a conflict with the International Covenant in cases where unmarried and divorced public servants are accorded unequal treatment although there are no reasonable and objective grounds for doing so.

365. Illegitimate children are discriminated against if the people who are responsible for their support are not entitled to a child allowance for them. This is contrary to the International Covenant.

366. The judgements of the courts have ensured equality in the various categories of cases where a conflict was round to exist in law with the International Covenant. However, the cases decided by the courts were of a one-off nature and meant only that the authorities were obliged to respect the rights of the persons concerned.

367. In the first half of 1990, however, the court of first instance passed judgement in a case in which the Island Territory of Curaçao sought an order from the court to end strikes within the educational system in Curaçao. Among their demands, the striking teachers were requiring that the authorities should end the inequality in the legal status of male and female teachers as regards pay.

368. On 10 May 1990 the court held as follows in this case: "Since 1984 the public service tribunals in the Netherlands Antilles and Aruba, the Appeal Court for the Public Service, the courts of first instance and the Joint Court of Justice of the Netherlands Antilles and Aruba have repeatedly - and in words that have become ever less susceptible of misunderstanding held that the continued existence of this inequality of legal position, which has been defined as "discriminatory", must be deemed to conflict with the obligations unconditionally entered into by the Netherlands in 1978 (the International Covenant). Similarly, the legislature has been urged by the courts with various degrees of firmness since 1984 to take the necessary measures. To date, however, no such measures have been taken. In the view of the court, the claims for the abolition of this unequal treatment before the law by the persons who are obliged to undergo this discrimination owing to the continuing failure to introduce the necessary legislation may, in view of this background, be treated as acquired rights and hence as an interest which cannot reasonably be surpassed. The court cannot therefore do otherwise than conclude that the present strikes are of an entirely lawful nature in so far as they relate to this aspect of the union's demands. It follows from the above that continuation of the strikes cannot be regarded as unlawful and that the application to this effect by the Island Territory should therefore be refused."

369. It was mainly due to this Judgement that the Government decided on 7 June 1990 in a joint meeting with the Executive Authority of the Island Territory of Curaçao to take measures to comply with the relevant parts of the judgement of the court of first instance as given in the interim injunction proceedings on 10 March 1990 (AR no. KG 87/90). The measures then taken were as follows:

1. With effect from 1 March 1990, the present remuneration for married people would be provisionally granted to:

(a) married female public servants;

(b) unmarried male and female public servants who have a legal obligation to support their children.

2. It was also decided to give a 5% pay rise to unmarried public servants who have no legal support obligations. This had anyway been the intention, but it was now decided that this should be granted provisionally from 1 January 1990, in anticipation, of the final settlement and entry into effect of the "phased" non-discriminatory pay scheme which had been presented to the Permanent Negotiation Council for the Public Service and the Advisory Council.

It was agreed that if it was administratively possible the increases referred to in 1. and 2. would be paid at the end of June 1990, which indeed proved to be the case.

370. The measures taken by the authorities as described above did not, however, put an end to the legal proceedings instituted against them in connection with the International Covenant. On 12 April 1990 the public service tribunal gave judgement in a case in which a female public servant brought a claim against the authorities since she considered that as an unmarried mother she too was entitled to child allowance for her illegitimate children. The tribunal held as follows. Under section 29 subsection 1 of the Act governing Substantive Public Service Law, a married public servant is entitled to a child allowance for his legitimate child. This is elaborated in section 31 in such a way that a public servant whose marriage has been dissolved is also entitled to a child allowance for his or her legitimate child (a woman only until she remarries). As regards the granting of a child allowance, however, there is no reasonable justification for making a distinction between legitimate and illegitimate children or between mothers who have been married but have not remarried and mothers who have never been married. An illegitimate child is no less of a burden on an unmarried mother than a legitimate child is on a divorced mother. These forms of discrimination on the basis of birth and (formerly) status are in breach of article 26 of the International Covenant, which was approved by Kingdom Act. The provision in question is self executing and as such forms part of the law of the Netherlands Antilles (public service tribunal no. 4/90 dated 12 April 1990).

371. This judgement was followed by a series of rulings in cases concerning child allowance. All of these cases were brought by female public servants and resulted in orders by the court that the authorities should pay the child allowance to the individual public servants concerned.

372. As a result of these judgements the authorities decided to award the child allowance to the following categories of public servants who have a statutory obligation to maintain their minor children:

1. married persons
2. persons who are judicially separated
3. divorced persons
4. unmarried men who have an acknowledged child
5. unmarried women whose child has not been acknowledged
6. persons with stepchildren and/or foster children within the meaning of section 29, subsections 1 and 2, of the Act governing Substantive Public Service Law.

The date on which the payment of child allowance was to start coincided with the date on which payment of the breadwinner's allowance to the new categories of recipient would start namely 1 March 1990. The authorities are endeavouring to revise the pay scheme in the course of 1992 in order to formalise the amendments that have already been made and to comply formally with the obligation resulting from article 26 of the International Covenant.

373. However, this is not yet the end of the matter as there still remain the illegitimate, minor children of married men who, on account of their married status, have not been able to acknowledge these children. Under the law of the Netherlands Antilles, a married man cannot in law acknowledge an illegitimate child. This means that this category of illegitimate children has no right to child allowance through their parents and are therefore accorded worse treatment than legitimate, legitimated and acknowledged children. To date this problem has not been raised before the courts.

Article 27: Minorities

374. Reference should be made in this connection to the First Report.

C. Netherlands Antilles Supplement 1998

Supplement by the Netherlands Antilles to the third and fourth periodic reports of the Kingdom of the Netherlands

Introduction

375. Pursuant to article 40 of the International Covenant on Civil and Political Rights ("the Covenant"), which entered into force for the Kingdom of the Netherlands in March 1979, the present report is submitted in accordance with the decisions and guidelines on periodic reports adopted by the Human Rights Committee. This supplement examines progress made since the third report in national legislation and practice relating to the implementation of individual articles of the Covenant. Since this report covers the period from the third report to September 1998, the Committee is requested to regard it as the fourth periodic report.

376. The report makes no observations on areas covered by the previous report which were unaffected by changes in the period under review. For further general information, see core document HRI/Core/1/add.67 and previous reports by the Netherlands Antilles.

Article 3: Equal rights of men and women

377. By ministerial order of 8 March 1991, an interdepartmental advisory group on women in development was set up that year to support the Women's and Humanitarian Affairs Office (BVZH). The aim was to foster an interdisciplinary, interdepartmental approach to equal opportunities policy.

378. On 1 October 1995, in accordance with the government programme for 1994-1998, the Department of Welfare, Family and Humanitarian Affairs was set up. This took over the work of the BVZH, which was disbanded. On 19 December 1996, the Advisory Group on Welfare, Family and Humanitarian Affairs was established, with a brief which includes advising the government, on request or on its own initiative, about gender policy.

379. Over the last 10 years, government policy has focused on the following:

(a) Helping develop ideas on equal opportunities internationally in regional and subregional forums. Since 1988, the Netherlands Antilles has been a member of the Board of Presiding Officers of the Economic Commission for Latin America and the Caribbean (ECLAC), which it chaired between 1991 and 1994. Since 1994, the Antilles have been represented - through the Kingdom - at meetings of the UN Commission on the Status of Women in New York. In September 1995, the Antilles were represented at the fourth UN Conference on Women in Beijing.

(b) Stepping up regional cooperation in the Dutch-speaking Caribbean region. In 1996, a cooperation agreement on gender policy was signed with Aruba and Suriname, aimed primarily at organising regional gender consciousness training courses for government and policy officials. The first was a course on gender consciousness and images of women in the media, held in Aruba on 21 and 22 September 1996. This was followed by another, entitled "Gender encounter: women and identity in the arts and politics", held in on Bonaire from 4 to 6 March 1997. The last such course, "Women and identity", emphasising education and training as a basis for empowerment, was held in Suriname on 26 and 27 June 1997.

(c) Legislation. The new Civil Code of the Netherlands Antilles is currently before parliament. Some provisions are relevant to women:

- the lowering of the age of majority to 18;
- a review of divorce law, making irretrievable breakdown of the marriage the only grounds for divorce;
- the limitation of maintenance payments to spouses to no more than 12 years;
- the right to maintenance following the ending of a long period of cohabitation;
- the removal of women's disadvantaged position in marriage and family matters in relation to the upbringing of children.

(d) Changes in social security legislation:

- In 1994, both the National Ordinance on Income Tax and the National Ordinance on Salaries Tax were amended, as a result of which married women in paid employment have been taxed separately since January 1998.
- With effect from January 1996, the National Ordinance on Old Age Pensions was amended to give married women an independent entitlement to an old age pension.
- The National Ordinance on Health Insurance Legislation was amended to take effect on 1 March 1996, with the result that all the members of an insured person's family are now covered by the insurance scheme.

Article 6: Right to life

380. In 1994, the Government of the Netherlands Antilles appointed a committee to amend parts of the Criminal Code of the Netherlands Antilles. As the death penalty has been abolished in martial law, there is no longer any reason to maintain the threat of the death penalty in article 103, paragraph 2, and article 108, paragraph 3, of the Criminal Code. When the Criminal Code is revised, therefore, the Government of the Netherlands Antilles will delete the references to the death penalty in these paragraphs.

Article 7: Prohibition of Torture

381. Paragraph 250 mentioned that the national legislation of the Netherlands Antilles did not refer expressly to the terms torture or cruel, inhuman or degrading punishment. Since then, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted in New York on 10 December 1984 (Netherlands Treaty Series 1985, 69) has been implemented in the National Ordinance of 13 October 1995 (Official Bulletin of the Netherlands Antilles 1995, no. 197). The National Ordinance makes torture as defined in the Convention a criminal offence carrying a penalty of no more than 15 years' imprisonment or a fine of no more than 100,000 guilders. If the torture results in loss of life, the guilty party will be sentenced to life imprisonment or a maximum of 20 years in prison and a fine of 100,000 guilders. The Ordinance declares the principle of universal jurisdiction applicable to the crime of torture.

381. As mentioned in paragraph 250, the Criminal Code also defines as criminal offences some infringements of personal liberty (articles 287-289) and acts against the person (articles 300-322).

382. The instructions on the use of weapons have been amended by a ministerial order regulating the use of handcuffs, police dogs and automatic weapons. In paragraph 252, it was mentioned that a victim of torture may bring a civil action on the basis of the unlawfulness of the act. Since then, an independent police complaints committee, whose members include a former public prosecutor and a doctor, has been set up by national ordinance. For each of the islands, a deputy secretary has been appointed to register complaints. The committee's powers are such that it can investigate complaints thoroughly. It reports to the Parliament of the Netherlands Antilles.

383. The National Investigation Department (Landsrecherche) was established by national decree to investigate offences committed by public servants.

384. Prisoners may bring actions for tort before the civil courts.

Article 9: Right to liberty and security of the person

385. In paragraph 273, the third report wrongly refers to the Code of Criminal Procedure of the Netherlands Antilles (Official Bulletin 1918, no 6). It should in fact refer to Official Bulletin 1914, no. 21. Secondly, a new Code of Criminal Procedure entered into force on 1 October 1997 (by virtue of National Ordinance of 5 November 1996 establishing a new Code of Criminal Procedure). The text of the new Code is contained in Official Bulletin 1996, no. 164, and a number of amendments have already been introduced by the National Ordinance implementing the Code of Criminal Procedure (Official Bulletin 1997, no. 237).

Article 10: Treatment of persons deprived of their liberty

386. Paragraph 279 commented on the prison and the remand centre. In addition to this it is stated that the Prison and the Remand Centre have several wings: a juvenile wing for detainees between (the ages of) 16 and 21; a remand centre; a wing for prisoners on short sentences; an observation and

treatment wing; a wing for prisoners on long sentences; and a women's wing. In 1993, a semi-open prison was opened, as was an institution for aliens awaiting deportation in 1997. Nevertheless, the Curaçao institution still faces serious capacity problems.

387. In 1994, the European Committee for the Prevention of Torture and Inhuman or Degrading Punishment (CPT) visited the Netherlands Antilles. The report on this visit contained serious criticisms of prison conditions in the Netherlands Antilles. The main criticism was of the physical conditions in which the prisoners were kept. In 1995, the Antillean government issued a report detailing the improvements that had been made, partly in response to the CPT's recommendations. It should be emphasised that the government is very concerned about prison conditions. Very high priority is therefore still being given to thoroughly overhauling the prison system.

388. The body responsible for the reorganisation of the prison system was set up by national decree no. 1 of 28 March 1994 (JAZ no. 1244).

389. In November 1996, a new director of the prison system was appointed. A master plan for implementation was presented to the Council of Ministers, where it was debated and approved. This has also led to the conclusion of a cooperation agreement between the Netherlands Antilles and the Netherlands. The latter will assist in the reorganisation process, which will be lengthy and time-consuming. A mixed working group has been given the task of overseeing and speeding up implementation of the reorganisation process. It is also expected to produce proposals for the recruitment and selection of prison personnel and expansion of the capacity of the prison.

390. Some short-term modifications have now been made. These include:

(a) implementation of security procedures in 1997;
(b) introduction of new posts such as a public relations officer and the Internal Affairs Bureau, appointment of a management team and expansion of personnel affairs;
(c) courses for middle management;
(d) implementation of new and improved selection standards to attract better educated personnel;
(e) refresher courses for personnel;
(f) implementation of new induction programmes for recruits;
(g) reactivation of internal support team.

391. Despite these efforts, disturbances in the prison could not be averted. There was a riot lasting three days (7-10 August 1997), caused by an announcement by the director of the prison system that visiting hours were to be changed. The inmates took advantage of the abnormally low staffing levels. Cell doors were lifted off their hinges and serious damage was caused to the building. After consulting with the Minister of Justice and the police, the prison governor decided not to use force to quell the riot, and fortunately no casualties resulted.

392. The Parliament of the Netherlands Antilles was very concerned about these events and urged the Minister of Justice to investigate the matter. The Minister of Justice set up an independent committee to investigate the causes of the riot and allegations that prison personnel had assaulted inmates and that inmates had assaulted one another both during and after the riot. The Paula Committee, named after its chairman, was established on 9 September 1997 and was given one month to present its findings to the Minister. After completing its investigation, the Committee concluded that the basic causes of the August riot were:

(a) the change in the prison visiting rules;
(b) the way in which this was communicated to the inmates;
(c) the prison management's refusal to discuss the changes with the inmates;

(d) the alleged sabotage by prison personnel;

(e) the abnormally low staffing level on the day in question.

393. As to the allegation of assault by prison personnel, the Committee could find no evidence that prison personnel had assaulted inmates during the disturbances. However, the Committee did find that incidents involving excessive force had occurred on 11 and 18 August, incidents which needed to be investigated by the National Investigation Department. It was clear from inmates' statements, which were substantiated by some of the prison staff, that irregularities had indeed taken place on the dates mentioned. The Committee found evidence of assaults on some inmates, some committed by prison guards and others by fellow inmates.

394. The Committee considered the situation in the prison to be dangerous and explosive and presented a list of recommendations for improving the safety of both inmates and prison guards.

395. In September 1997, a project leader took charge of the reorganisation of the Netherlands Antilles prison system. Preparations for long-term measures could then start as proposed in the master plan and the implementation plan. A second project leader has since been appointed to expedite the preparations for the infrastructural side of the process.

396. Several activities were launched in December 1997 to improve the quality of life in the Curaçao prison. The inner courtyard is now again being used for sports. From January onwards, regular personnel teams will collect intake data on prisoners which will make it possible for them to be deployed in the various work and training programmes. The outside workshops are now in use again, and cells for visits have been expanded.

397. Minor disturbances in January delayed the start of some short-term activities. However, every effort is being made to introduce various short-term measures.

398. A lawyer has been appointed as an internal ombudsman to visit inmates regularly and ensure that their complaints are properly dealt with.

399. It is now compulsory for inmates to be heard before they are disciplined.

400. The national ordinance (Official Bulletin 1930, no. 73) referred to in the report will lapse with the entry into force of the Principles of the Prison System National Ordinance (Official Bulletin 1996, no. 73).

401. Paragraphs 280-282 are no longer applicable.

402. In paragraph 283 it was mentioned that a Bill to revise the law on the principles of modern penology was presented to Parliament. The Principles of the Prison System National Ordinance 1996 has now received parliamentary approval (Official Bulletin 1996, no. 73). It will effect considerable improvements in the lives of inmates, and will serve to safeguard their rights. The Ordinance regulates the organisation of penal institutions, differentiation within the prison regime, financial management and supervision, work, spiritual counselling and complaints procedures. However, the ordinance has not yet entered into force as the legislation needed to implement it is still in preparation. The finishing touches are now being put to the implementation bill.

Article 14: Entitlement to a fair and public hearing

403. The new Code of Criminal Procedure has now entered into force. Throughout this report, therefore, references to articles in the old Code must be replaced by references to the corresponding articles in the new Code.

404. In paragraph 303 mention was made of article 50 of the Code of Criminal Procedure of the Netherlands Antilles that provides that a person will be treated as a suspect if there is a responsible suspicion from facts or circumstances that he is guilty of a criminal offence. Article 46 of the New Code of Criminal Procedure lays down the conditions for officially designating someone as a suspect. From that point on, the way is open for criminal proceedings and all the related consequences defined in the Code.

405. In paragraph 304 mention was made of the different rights included in paragraph 3 of the Code of Criminal Procedure. Since then the New Code of Criminal Procedure has entered into force, which provides the following: in accordance with article 82 of the Code of Criminal Procedure, all suspects who are taken somewhere for questioning are told the nature of the detention being imposed on them and the reason for it, and are informed of the rights listed below. In addition to being informed of their rights verbally, they are given a form stating their rights. The Code of Criminal Procedure specifies that the form must be available in any event in Dutch, English, Spanish and Papiamento. From the moment a person is officially designated as a suspect, he/she has the following rights:
the right to the assistance of counsel (article 47, Code of Criminal Procedure)
the right to the assistance of counsel whenever he/she is questioned (article 49);

- the right to remain silent (article 50);
- the right to examine documents relating to his/her case on request (article 51) and
- the right to have his/her case dealt with within a reasonable time (article 55).

406. Suspects are entitled at any time to choose one or more legal counsel to assist them. Furthermore, every suspect remanded in police custody is assigned counsel as soon as the order for remand in police custody is issued, unless he/she waives that right. Lastly, the rights specified in article 14, paragraph 3 (b, e, f and g) of the Covenant are sufficiently guaranteed by the Code of Criminal Procedure.

407. Paragraph 305 describes the negative, statutory system of evidence. Since the entering into force of the New Code of Criminal Procedure, the court may accept proof that an accused person has committed a criminal offence only if the court is convinced by items of lawful evidence introduced at the trial. The following are defined as lawful evidence: the court's own observations, statements by the accused, statements by witnesses and experts, and documents.

408. In relation to paragraph 4, reference is made to article 479 ff of the Code of Criminal Procedure, which contain different provisions concerning persons who are under the age of 18 when prosecution proceedings against them begin.

409. Paragraph 308 mentioned provisions for appealing against judgements given by courts of first instance. Under the New Code appeals against judgements by the Court of First Instance are regulated by article 433 ff of Book 6 of the Code of Criminal Procedure. The court of highest instance in the Netherlands Antilles is the joint court of justice for the Netherlands Antilles and Aruba.

410. The award of damages in the event of contraventions of the provisions of the new Code is regulated by article 413 of the Code of Criminal Procedure.

Article 15: Principle of nulla poena sine praevia lege poenali

411. In paragraph 313 it was stated that this principle is contained in article 1 of the Criminal Code of the Netherlands Antilles. Now the nulla poena sine praevia lege poenali principle is embodied in article 9 of the Code of Criminal Procedure, which states: "Criminal proceedings shall take place solely in the cases and in the manner provided for by national ordinance".

Article 16: Right to recognition as a person before the law

412. In addition to paragraph 315 mention is made of the current revision of the Civil Code.

Article 17: Right to privacy

413. In paragraph 317 it was mentioned that the right to privacy is recognised by other legislation too. Under articles 144 and 368 of the Code of Criminal Procedure, it is a criminal offence to enter a dwelling without the consent of the occupant. Under article 207 of the Criminal Code, a public official who unlawfully violates the confidentiality of correspondence is criminally liable.

414. Paragraph 317 incorrectly referred to a bill to amend the Code of Criminal Procedure. Instead, it should have referred to a bill to amend the Criminal Code of the Netherlands Antilles, which became law by National Ordinance of 28 September 1994 amending the Criminal Code of the Netherlands Antilles (Official Bulletin 1994, no. 114).

415. Paragraph 318 stated that the Criminal Code lacked any modern provisions to prevent the use of advanced technology to tap telephones and take intrusive photographs. Telephone tapping is now also an offence under the Criminal Code, as is obtaining information unlawfully via the telecommunications infrastructure.

416. The bill mentioned in paragraph 318 has now become law by National Ordinance of 19 May 1995 amending the Code of Criminal Procedure of the Netherlands Antilles, Official Bulletin 1995, no. 84. The old Code of Criminal Procedure has in fact now been withdrawn and replaced by an entirely new Code, which contains a provision on telephone tapping similar to that introduced by the national ordinance referred to above.

417. Paragraph 319 lapses.

Article 18: Freedom of religion and belief

418. No changes have been made. There has, however, been a debate about the extent of freedom of education in connection with the introduction of the language of the majority as the medium of instruction in schools. Linguistic freedom of choice was linked to the freedom of education as regulated by article 140 of the Constitution of the Netherlands Antilles. The dispute has been placed before the highest judicial tribunal in the Kingdom.

Article 19: Freedom of expression

419. Developments in this area mainly relate to the media policy plan, which contains a number of proposals affecting the freedom of expression.

Article 22: Freedom of association

420. There are organisations (Service Clubs) which do charitable work for the community in general and for the poor in particular, while others provide courses in leadership etc.. Some of these are affiliated to international organisations with their headquarters in the United States or Europe.

421. Since the 1970s, these organisations, and in particular trade unions, have recommended that their members vote for certain political parties in parliamentary and island council elections. In the campaign for the most recent election on 31 January 1998, a number of trade unions in one of the island territories joined forces to set up a political party, which gained enough votes to win three of the 22 seats in the Parliament. This party is now part of the governing coalition for 1998-2002, being represented in the government by two ministers and the speaker of Parliament.

Article 24: Protection of the child

422. The Convention on the Rights of the Child entered into force for the Netherlands Antilles on 16 January 1998. It contains provisions and safeguards to protect children. Article 7 governs the registration of a child after birth, the right to acquire a nationality and the importance of ensuring that the child is not stateless.

423. The new Civil Code is being debated by the Parliament of the Netherlands Antilles. The introduction of the new Civil Code will entail certain changes relating to article 24, within the purview of the Board of Guardians and the Child Care and Protection Board.

424. What follows is a list of subjects covered by the present Civil Code, on which proposals for amendments have been introduced.

(a) In relation to parental responsibility, current law provides that the father's wishes shall prevail in the event of a difference of opinion about the place of residence, the child's education etc. Under the new bill, both parents shall exercise parental responsibility during the marriage (article 251). A mother who has reached the age of majority will automatically have parental responsibility for her children;

(b) There are no proposals to change existing law on the maintenance of minor children: parents are under an obligation to provide for the maintenance and education of their children until the latter reach the age of 21. This also applies to step-parents and to fathers of illegitimate children whom they have not acknowledged;

(c) At present, co-habiting parents who are not married to each other may not share parental responsibility for their children. Under the new proposal, they will be allowed to do so, provided they have a family-law relationship with the children.

Article 26: Prohibition of discrimination

425. Over the last three years, discriminatory provisions in the law governing public servants have been repealed, notably in the National Ordinance on Public Service Law.

426. The proposed new Civil Code now being debated by the Parliament of the Netherlands Antilles contains a number of amendments that will remove other existing discriminatory provisions. Examples of current law and the amendments proposed in the new Civil Code are given below.

(a) Under current law, with regard to maintenance a man is obliged to pay housekeeping money to the woman he lives with (article 156). Under the amendment, both partners are obliged to contribute financially to running the household (article 85);

(b) Under current law, unmarried couples, cohabiting, with children, may not share parental responsibility for their children. Under the amendment they may share parental responsibility for their children with whom they have a family law relationship.

427. Certain social and economic inequalities will also be eliminated, with the introduction of equal pay for equal work. In 1992, new legislation entered into force to equalise the salaries of married and unmarried men and women. Although equal pay for equal work now applies in the public sector, this is not yet the case in the private-sector labour market. For example:

(a) Married men with certain qualifications and years of service earn more than unmarried men with the same qualifications and years of service.

(b) Men earn more than women of the same age with the same qualifications. There have even been cases of men earning more than women doing the same job, where the women not only had the same number of years of service, but were better qualified than the men. Most companies are prevented from equalising salaries by the costs involved. Some private-sector companies still believe that only men should be breadwinners and that they therefore deserve a higher salary.

(c) Everyone is entitled to the minimum wage on reaching the age of 18. Certain companies employ young people under 18, and pay them less even though they are doing the same work as employees aged 18 and over.

428. With regard to the tax system, until recently, under the National Ordinance on Income Tax 1943 (Official Bulletin 1956, no. 9), a married woman's net income was regarded as her husband's net income. With effect from 1 January 1995, this was amended by National Ordinance of 28 December 1994 (Official Bulletin 1994, no. 142) amending the National Ordinance on Income Tax 1943 (Official Bulletin 1956, no. 9) and the National Ordinance on Salaries Tax 1976 (Official Bulletin 1975, no. 254).

429. Legal aid is governed by the National Decree on legal aid (Official Bulletin 1959, no. 198). In the past, legal aid was refused to married women wishing to institute proceedings for divorce or judicial separation if the couple's income from employment exceeded 20,000 guilders per year. If the woman was not employed outside the home, it was refused if the husband's income exceeded this sum. A national decree containing general provisions of 5 April 1993 (Official Bulletin 1993, no. 40) put an end to this situation.

430. With regard to Social Security, in 1995 the National Ordinance on Old Age Pension Insurance and General Widows' and Orphans' Benefit Insurance (Official Bulletin 1965, no.194) were amended by National Ordinance of 27 December 1995 (Official Bulletin 1995, no. 228), introducing the following:

- married women are now liable for separate social security contributions
- widowers are entitled to a widower's pension;
- discrimination in relation to orphans' benefits has been eliminated.

431. Amendments to the National Ordinance on Health Insurance and the National Ordinance on Accident Insurance removed the distinction between married and unmarried persons by National Ordinance of 1 February 1996 (Official Bulletin 1996, no. 8).

V. ARUBA

A Introduction to the report of Aruba

432. Aruba, the most western of the Leeward group of islands, was formerly part of the Netherlands Antilles. It is situated in the Caribbean, 15 minutes by air off the coast of Venezuela and 12 degrees north of the equator. The island is 19.6 miles long, 6 miles wide at its widest point and has an area of 70.9 square miles.

433. Aruba is one of the few islands in the Caribbean where traits of the native Indian population are still evident. The Aruban population today is a mixture of American Indian, European and African blood. The native language is Papiamento, while most Arubans speak English, Spanish and Netherlands in addition. Netherlands is the official language. However, plans have been drawn up to introduce Papiamento in addition to Netherlands as the language of instruction in schools.

434. Some 40 or more nationalities have contributed to creating a unique and peaceful society in Aruba. The main industry is tourism, while the oil refinery has recently resumed operations for the first time since its closure in 1985.

435. Aruba is a parliamentary democracy. The Head of State is the Queen, represented by the Governor, who is appointed by the Queen on the recommendation of the Aruban Cabinet. The Cabinet is accountable to Parliament which consists of one House. Members of Parliament are chosen by general election every four years. The Governor and the Cabinet jointly form the Government of Aruba.

436. This report is submitted in pursuance of article 40 of the International Covenant on Civil and Political Rights. The Covenant became effective for the Kingdom of the Netherlands, including Aruba, on 11 March 1979.

437. In 1986, Aruba attained separate status within the Kingdom of the Netherlands, thus necessitating the submission of separate periodic reports on the implementation of the Covenant.

438. This report covers the period from 1986-1991 and follows as closely as possible the Guidelines laid down by the Committee in Document CCPR/C/20 of 19 August 1981, as well as the Manual on Human Rights Reporting (United Nations Publication; Sales No. E.91.III.K.Man/6). It is followed by a Supplement (part V.C.) providing an update up to 1998.

439. For more general information on Aruba, reference is made to the Core Document of the Kingdom of the Netherlands (HRI/CORE/1/Add.68).

B. International Covenant on Civil and Political Rights

440. Part V.B. of this report contains information relating to articles 1 to 27 inclusive of the Covenant. An outline will be given of the most relevant legislative instruments available to Aruba in fulfilling the terms of the said Covenant. If available, case law and other practical information will be used to illustrate its implementation. The information presented in Part V.B should be regarded as supplementary to that in Part V.A .

Article 1: Right to self-determination

441. As stated in the second report, Aruba acquired the status of separate country within the Kingdom on 1 January 1986. During the 1983 Round Table Conference, where agreement on this

separate status was reached, the Netherlands urged that it be granted for a period of ten years, after which Aruba should gain independence. Article 62, paragraph one of the Charter for the Kingdom of the Netherlands puts it as follows:

> "1. With regard to Aruba, the constitutional order laid down in the Charter shall end as of 1 January 1996."

442. Since these words were written, the situation has changed in such a way in both the Netherlands and Aruba that neither country is of the opinion that the provision relating to independence need necessarily be retained in the Charter. On 13 July 1990, the Minister for Netherlands-Antillean and Aruban Affairs and the Aruban prime minister agreed that article 62 would be rescinded and that both Caribbean countries (the Netherlands Antilles and Aruba) would retain the right to secede from the Kingdom. Such a step could only be effected by means of a Country Ordinance, passed by a two thirds majority and after the results of a national referendum had demonstrated that a majority of voters were in favour of independence. The results of the debate between the three countries of the Kingdom on an amendment to the Charter to this effect will be dealt with in the next periodic report.

443. Aruba does not have any specific regulations relating to the implementation of the provisions of the second paragraph of article I of the Covenant. The natural wealth and resources of Aruba are not yet being fully exploited. Seismographic research has shown that the ocean bed around Aruba might contain oil. As it has not yet yielded results, drilling has been discontinued. In the past, there was a certain degree of gold and phosphate mining. Aruba relies totally on costly desalinated sea water for its drinking water.

444. It may be noted that endeavours to achieve the right to self-determination as laid down in the third paragraph can only be effected within the Kingdom as a whole. Aruba therefore endorses the remarks made on this subject in the second report.

Article 2: Non-discrimination

445. Recognition of equality is worded as follows in article 1.1 of the Constitution of Aruba:

> "All people in Aruba are equal. Discrimination on the grounds of religion, belief, political opinion, race, sex, colour, language, nationality, social origin, wealth, birth, membership of a national minority or on any other grounds whatsoever is prohibited".

446. The remarks made by the Netherlands government in the second report on the scope of this provision of the constitution, principally as a result of the addition "on any other grounds whatsoever", apply equally to the Constitution of Aruba, as the said article is largely similar to the first article of the Netherlands Constitution.

447. Since taking office in February 1989, the government has implemented this article by, for example, abolishing the distinction drawn between married and unmarried status in determining the salaries of public servants. The measure, which was introduced on 1 January 1990 by means of various public servants' pay decrees was implemented after a number of court judgements had laid down that the distinction was unjust.

448. In addition, the distinction drawn between legitimate and illegitimate children in the allocation of child allowances was abolished as of 1 January 1991.

449. Finally, it is worth mentioning that an agreement concluded with the trade unions has led to the acquisition of public servant status and membership of the Aruba General Pension Fund for manual workers and cleaners. This alteration in status, introduced as of 1 August 1990, also led to the

inclusion of the employees involved in the public servant salary scales and a consequent increase in their income.

450. The Aruban government must acknowledge that distinctions based on a number of the grounds mentioned in this article still exist. Yet, it is of the opinion that exceptional factors justify a distinction in certain cases. The size of the country plays an important role. In order to ensure that the living conditions on a small island such as Aruba are congenial to those entitled to enjoy them, it is not only desirable, but also essential that a number of matters are subject to certain restrictions. An example is policy on residence on Aruba: only those Netherlands nationals who were born on Aruba are entitled to a permit on the basis of the Country Ordinance on passenger transport, the Ordinance on the establishment of companies or the Country Ordinance on electricity franchises. In this connection too, the regulations relating to the admittance and deportation of aliens, which will be discussed in more detail under article 13, may be mentioned. In those cases in which distinctions cannot be justified, regulations and related policy will be amended in such a way as to remove them.

451. An example of an existing statutory provision which is contrary to the terms of this article of the Constitution is article 1 paragraph 1 d of the Country Ordinance on admittance and deportation, in which reference is made to "members born outside Aruba of the legitimate family of a male Netherlands national". The provision entitles the legitimate family of an Aruban male only and thus not of an Aruban female to be admitted to Aruba. A new Country Ordinance on admittance and deportation is currently under preparation. The new Country Ordinance represents a complete revision of the system of admittance, abolishing the discriminatory provision.

452. The following comments may be made with regard to the third paragraph. Many statutory regulations provide for the right of appeal against certain decisions of administrative bodies. The citizen may, for example, appeal against decisions made on the basis of current tax legislation to the Fiscal Appeals Council. Similarly, public servants may appeal to the public servants' tribunal. These procedures are, in the opinion of the Aruban government, consistent with this article and article 14, paragraph 1, of the Covenant, as the courts involved are independent and impartial. Appeal to the Governor or a Minister is a different case; these act in a great number of cases as administrative appeal bodies but do not act as impartial and independent courts. Partly as a result of the judgement of the European Court of Human Rights of 23 October 1985 (Benthem), whereby appeal to the Netherlands Crown, in Aruba represented by the Governor, may not be regarded as independent and impartial justice, an administrative procedure has been prepared. To this end, a draft Country Ordinance is pending whereby all exceptional appeal and objection procedures are to be replaced by one administrative procedure, i.e. appeal to a court of first instance. This appeal may be instituted against any decision made by an administrative body which has legal consequences provided a compulsory objection procedure has been completed. The Country Ordinance on administrative procedure will be further dealt with in the next report.

453. In those cases which are not included in the provisions of the Country Ordinance, the individual may institute civil proceedings on the grounds that the government has committed a tort (article 1382 of the Civil Code of Aruba). Such proceedings are conducted before the court of first instance, with scope for appeal to the Joint Court of Justice of the Netherlands Antilles and Aruba and of appeal in cassation to the Supreme Court of the Netherlands.

454. General comment 15 (27) requests information on the position of aliens in the member state concerned. Although further details will be provided under Article 13, admittance and deportation procedures in Aruba will be outlined below.

455. The Country Ordinance on admittance and deportation, the Admittance decree and various ministerial orders together represent a restrictive policy on admittance. Aliens wishing to enter the Aruban employment market need to meet a number of requirements, which include the submission of

- two passport photographs, a character reference drawn up within the previous two months, a medical certificate issued in the country of origin within the previous month stating that the individual involved does not suffer from an infectious disease or mental illness, certificates and references relevant to the job in question, a letter of guarantee from the employer and the contract of employment concluded with the employee in accordance with Aruban law

456. Aliens are admitted in the following cases only: if they represent no threat to the public good and the maintenance of public order, if positions cannot be filled from manpower supply on the local labour market and on humanitarian grounds.

457. With a view to maintaining checks on the number of nationals of the Dominican Republic and Haiti living in Aruba, a maximum admittance quota is currently applicable.

458. Aliens must leave Aruba within three weeks of the expiry of their employment contract or residence permit.

459. The following legal remedies are available to aliens wishing to appeal against deportation: interlocutory injunction proceedings or appeal to the Minister of Justice or Governor. Only those people whose residence permit has been rescinded are permitted to remain in Aruba to await the outcome of the proceedings. The court may however issue an interlocutory injunction allowing an alien who has received a deportation order for another reason to remain in the country. Case law shows that this occurs in most cases.

460. As stated above, the Country Ordinance on admittance and deportation is currently undergoing thorough revision.

Article 3: Equal rights of men and women

461. As stated under article 2, article I.1 of the Constitution of Aruba has become an important instrument in the removal of discrimination on the grounds of sex and marital status. The remarks made under article 2 apply equally to this article.

462. With regard to Aruban women, it may be noted that Aruban society is a highly matriarchal one so that Aruban women enjoy a relatively strong social position.

463. As a result of the growth of the Aruban economy, it became necessary to attract Aruban women into employment outside the home. Although recent figures were not available at the time this report was drawn up, it may safely be said that women account for a considerable proportion of the Aruban working population.

464. With regard to the recognition and acquisition of Netherlands Nationality, the Netherlands Nationality Act is based on the ius sanguinis principle: the nationality of the parents determines whether a child may acquire Netherlands nationality. As men and women have equal rights, the Act lays down that the nationality of the father or of the mother determines ipso jure acquisition of Netherlands nationality (section 3). Previous to this, the nationality of the father was decisive.

465. After being married to a Netherlands national for a period of three years, the spouse may submit an application for Netherlands nationality (article 8, paragraph 2). It is, therefore, not acquired automatically. The law does not draw distinctions between men and women in this matter.

Article 4: Restrictions on derogations from obligations under the Covenant

466. The provision that in a public emergency a State Party may take certain statutory measures which might, in some cases, lead to restrictions on the exercise of certain fundamental rights, has had its repercussions on the Aruban Constitution. Article V.29 of the Aruban Constitution authorises the drawing up, by Country Ordinance, of further measures to be taken in a state of emergency. The second paragraph does not exclude the limitation of certain fundamental rights in such cases. Parliament is responsible for proclaiming and ending the state of emergency. (article V.29, paragraph 3).

467. A Country Ordinance has already been drawn up to implement article V.29, i.e. the Disaster Ordinance (AB 1989 no.51). This ordinance contains provisions in the administrative field which become operative as soon as it has been established that a disaster, in its statutory sense, has occurred. As guidelines relating to implementation, such as the legal status of those who have been called in to assist in combating the disaster and the compensation to be paid for the use of confiscated goods, have not yet been drawn up, the Country Ordinance has not yet become operative. No further specific measures to be taken at national level in states of emergency are in existence.

468. A state of emergency was not declared at any time in Aruba in the period between 1986-1991. This was also the case in the period before 1986.

Article 5: Prohibition on narrow interpretation of the Covenant

469. Fundamental rights are laid down in the 22 articles of Section 1 of the Aruban Constitution. A number of fundamental rights are also laid down in other passages of the Constitution (for example: article V.22: on sufficient employment; article V.23, second paragraph: on the provision of sufficient living accommodation).

470. The catalogue of such rights is extensive and is based on international conventions, such as the Universal Declaration of Human Rights, the European Social Charter, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, dating from the same year, the American Convention on Human Rights of 22 November 1969 and the European Convention for the Protection of Human Rights and Fundamental Freedoms, in addition to the Constitution of the Netherlands and generally acknowledged principles of fundamental rights.

471. Furthermore, the articles of the Netherlands Constitution which stipulate the order of precedence of international conventions and national guidelines also apply to the constitutional order of Aruba. The provisions of these articles solve the problems which arise should the application of provisions of a convention or decision of a human rights organisation which are binding on each individual conflict with the statutory provisions of the country concerned. In such cases, the provisions of the convention or of the human rights organisation take precedence over national statutory provisions. Of crucial relevance are the words "binding on each individual". Such provisions are directed at individuals themselves, without regard for governments.

472. The Aruban government is aware that the terms of the Covenant may be open to a variety of interpretations. A wide interpretation would regard it as applying not only to the legal relationship between an individual and the State Party (the "vertical" effects), but also to the legal relationship between individuals themselves (the "horizontal" effects). A second, narrower interpretation would not recognise scope for individuals to enforce their civil rights as they relate to other individuals, but would only recognise the vertical effects of the terms of the covenant.

473. The petition procedure laid down in the Covenant and the optional protocol is not intended as a means by which individuals may enforce their rights in respect of other individuals; the procedure is

designed as a means of seeking redress from a State Party which has violated a provision of the Covenant. This does not, however, alter the fact that the self-executing rights and freedoms laid down in the covenant may indeed also be applied directly by the domestic courts. Much will depend in this case on the question if and to what extent the rights and freedoms contained in the Covenant have also been expressed in domestic regulations.

474. Insofar as such rights and freedoms have been expressed in the constitution, which is the case with regard to a considerable number of the provisions of the Covenant in the Constitution of Aruba, the question of whether they are self-executing remains. Of crucial importance is whether domestic regulations may be examined in the light of the rights and freedoms laid down in the constitution. Article I.22 of the Constitution of Aruba creates scope for such an examination, i.e. "Statutory provisions do not apply in those cases in which they are at odds with the provisions of this Section" (Section I: fundamental rights). Should no similar scope for examination exist, violations of civil rights could only be dealt with by means of a domestic procedure, if such rights are laid down in legislation. This applies even if civil rights are not laid down in the constitution.

475. The question as to the interpretation of the Covenant cannot be answered unequivocally with regard to Aruba. No provisions relating to horizontal effects are laid down in the Covenant itself, but obstacles are not put in the way of any State Party wishing to recognise them, where appropriate, within its own legal system. Much will depend on specific circumstances and continually changing attitudes towards the question involved.

476. The Aruban government is therefore of the opinion that no clear and unequivocal solution can be provided to the question of the horizontal effects of the provisions of the Covenant as a whole or of the individual rights and freedoms contained therein. However, should a statement in the matter be desired, the Aruban government would emphasise that it endorses a wide interpretation.

Article 6: Right to life

477. Article 6 determines the right to life, which is, as described in various of the Committee's General Comments, the supreme right, deprivation or limitation of which is prohibited under any circumstance whatsoever.

478. Article I.4 of the Constitution of Aruba prohibits the death penalty. The prohibition is general and knows no distinctions, such as, for example, between adults and young persons. Even before the prohibition was laid down in the Constitution, the death penalty had never been imposed in Aruba. On 1 January 1991, the Military Penal Code Amendment Act implementing reform of military law and the abolition of the death penalty (act of 14 June 1990, Bulletin of Acts, Orders and Decrees 1990, 368; AB 1990, no.61) was introduced, under the terms of which the death penalty was abolished in military criminal law.

479. The right to life is closely related to quality of life. For the sake of brevity, we would refer the reader to the data on birth and death rates, life expectancy and other elements relating to population growth included in tables IV, VII and VIII of part V.B of this report.

480. The punishment to which individuals who have unlawfully taken the life of another individual are liable may be found in articles 300 to 312 and in a number of the articles of Chapter XX (assault) of the Aruban Criminal Code.

481. Aruba does not have 'victim support' facilities for the victims of violent crime. However, the general tort article of the Civil Code provides scope for civil proceedings in which compensation may be claimed for the material and non-material damage incurred in such cases.

482. The waging of war is inconsistent with the enjoyment of the right to life, as stated in General Comment 14 (23). Under the terms of Article 3, paragraph la of the Charter of the Kingdom of the Netherlands, the maintenance of the independence and the protection of the Kingdom are Kingdom affairs towards the costs of which Aruba and the Netherlands Antilles contribute (articles 30 and 35 of the Charter). The role of Aruba and the Netherlands Antilles in these matters is further laid down in The Defence Act (Netherlands Antilles and Aruba) (Bulletin of Acts, Orders and Decrees 1985, 658; AB 1986, no.l9; AB 1986 no. 11).

483. The Kingdom may only declare war with the permission of the States General (Article 96, paragraph 1 of the Netherlands Constitution).

484. The use of firearms by the authorities may unfortunately sometimes lead to loss of life. This did not occur at all on Aruba in the period 1986-1991. See further under Article 7 for comments on the use of firearms by the police.

Article 7: Prohibition of torture

485. The prohibition of torture, as laid down in the provisions of article 7 of the Covenant, may also be found in the provisions of the Convention against the use of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, to which Aruba has been a party since 20 January 1989. The Aruban Criminal Code and Code of Criminal Procedure do not contain provisions directly prohibiting the use of torture. However, in combination with other acts and decrees, the Codes contain provisions providing the individual with a considerable degree of protection against the possible incidence of behaviour which could be regarded as torture. In addition, scope for redress is created for those persons who are of the opinion that they have been the victims of torture.

486. The prohibition of mistreatment and torture is inherent to article I.3 of the Constitution of Aruba which lays down the principle of the inviolability of the human body. Article 381 of the Aruban Criminal Code declares as punishable "the official who abuses his or her authority to force an individual to perform an act, to refrain from or to concur with the performance of an act"

487. In view of the fact that, in practice, the police force will mainly be concerned with complaints relating to torture, much attention is paid to human rights during police training. Article 12 of the Country Ordinance on police training (AB 1986, no.25) lays down that, on completion of the initial training, a trainee should possess:

> "(a) sufficient knowledge and understanding of law to be aware of the complexity of its applications;
>
> (b) sufficient knowledge and understanding of the general responsibilities of the police and of the provisions relating to the legality of police activities, particularly as they affect the competences and instructions relating to the use of force in his or her position as an investigating officer (...);
>
> (e) sufficient knowledge and understanding of the term 'offence', the most essential general principles of criminal justice and the most relevant punishable offences (....);
>
> (h) sufficient knowledge and understanding of human rights in general and the fundamental rights contained in the Constitution of Aruba in particular, in addition to the willingness to protect these rights."

488. A police officer is authorised, in the just exercise of his office or position and under certain strict conditions, to use force against persons and property. Taking into consideration the possible risks attached, force may only be used when justified by the objective and when no other means are available to achieve the said objective (article 3, Country Ordinance on the police; AB 1988, no. 18). Wherever possible, the use of force must be preceded by a warning (article 2). A separate Country

Decree (Country Decree on the use of force and police security searches; AB 1988, no. 6) contains inter alia the following guidelines:

> "Article 3.
>
> 1. Police officers are authorised to use force in the performance of their duties under the following conditions only:
>
> (a) the objective cannot be achieved by any other means and
>
> (b) the objective is of sufficient importance to justify the use of force and
>
> (c) the disadvantages of not achieving the objective outweigh the risks attached to the use of force, including risks to third parties".

489. In addition, reason and moderation must be exercised in the use of force, while the risks to those involved and to third parties must be limited as far as possible (article 4, paragraphs 1 and 2 of the above Country Ordinance). Articles 7 (non-automatic firearms) and 9 (automatic firearms) contain provisions relating specifically to the use of firearms.

490. A torture victim may apply for compensation in the civil court on the grounds of tort article no. 1382 of the Civil Code. No specific victim support facilities are available, as stated above.

491. The Country Decree on complaints against the police (AB 1988, no.71) instituted a complaints committee to which those persons objecting to specific instances of police activity may appeal. This committee which consists of "eminent persons of good behaviour of whom it may be expected that they are able to provide a balanced judgement of the relationship between the police and the public and have knowledge of the sensibilities of the Aruban community in this respect" (article 5) deals with complaints of "each individual who is of the opinion that his or her interests have suffered direct damage from the actions or words of a police officer, performed or spoken on a specific occasion while he or she was performing his or her duties"(article 2).

492. The disappearance of persons is often, regrettably, closely connected with the exercise of torture. In order to prevent such abuses, Aruban legislation contains certain safeguards, such as provisions included in the Prisons Ordinance and the Country Decree on Prlsons which, for example, ensure that prisoners are only detained in those places specifically designated for that purpose, (i.e. prison or remand centre: articles 1 to 3 inclusive of the Prisons Ordinance) that the prisoners are properly registered (articles 21 and 22 of the Country Decree) and that prisoners may receive visitors (article 47 of the Country Decree).

493. Detainees may address complaints on matters relating to the institution in which they are serving their sentences to a Supervisory Committee (article 6, paragraph 2 and article 4 of the Country Decree on the prison and remand centre Supervisory Committee). This Country Decree, which dates from 1962, does not correspond to the present situation, which has altered considerably since the decree was first implemented.

494. Individuals in Aruba are not subject to scientific or medical experimentation as science has not reached such a level as to make it possible. Medical care in Aruba consists of the provision of basic necessities and care. Scientific research is out of the question, due to a lack of both funds and available personnel.

Article 8: Prohibition of slavery

495. In view of the world-wide abolition of slavery, the prohibition as contained in article 8 relates to slavery in its modern forms: the trade in women or children, prostitution and forced labour. The prohibition of slavery is inherent to article I.5 of the Constitution of Aruba which lays down the right

to liberty and security of person, while the Kingdom (including Aruba) is party to the Slavery Convention (Geneva, 25 September 1926, Treaty series 1980, 80) and the Protocol amending the Slavery Convention (New York, 7 December 1953, Treaty series 1980, 81). Moreover, according to article 2 of the Aruban Civil Code,

> "...Slavery and personal servitude of any nature whatsoever and known by any name whatsoever are prohibited in Aruba."

496. Although prostitution occurs in Aruba, as it does in most other countries in the world, trade in women may be regarded as non-existent. The persons in question come to Aruba of their own free will and are often registered as prostitutes, although a considerable number work "free-lance". Attempts are often made to enter into a marriage of convenience with an Aruban, or other Netherlands national. As stated above, however, under the terms of the Netherlands Nationality Act, Netherlands nationality may only be acquired after three years of marriage (section 8, paragraph 2).

497. The court may impose the following punishments in criminal cases (article 9 Aruban Code of Criminal Procedure):

(a) main punishments
  1. prison sentence
  2. detention
  3. fine

(b) supplementary punishments
  1. loss of certain rights
  2. confiscation of certain articles
  3. publication of the court judgement.

498. The court may impose the following punishments on persons who have not yet reached the age of eighteen:

(a) fine
(b) warning.

499. Article 14 of the Prisons Ordinance requires convicted prisoners to perform compulsory labour, preferably household duties or the manufacture of articles for the government services. Labour may be performed for a maximum of ten hours a day (article 17 Prisons Ordinance). The practice whereby the court was permitted to impose labour in public works as part of the sentence has been prohibited for many years. However, detainees may perform duties on a voluntary basis for the government or a third party in return for a wage which varies according to the nature of the duties performed; both the government and third parties make extensive use of this facility.

500. Persons employed as domestic personnel, frequently nationals of Haiti, Venezuela, Colombia, the Dominican Republic or Jamaica, are sometimes required to work during weekends or more than eight hours a day. In principle, these persons do not belong to the category 'employees' referred to in the Labour Ordinance (AB 1990, no. GT 57). They are, therefore, unable to invoke the protective terms of the said ordinance which relate, for example, to the maximum number of hours a person may be required to work weekly. However, if the authorities are notified of the inhuman treatment of domestic personnel, immediate measures are taken against the employers concerned. A specially established working group is currently preparing a new regulation to replace the existing one which only touches on the position of domestic personnel.

Article 9: Right to liberty and security of person

501. Article I.5 of the Constitution of Aruba lays down the right to liberty and security of person, as referred to in article 9 of the Covenant.

502. In addition to those individuals detained during trial or serving prison sentences, the following persons may be deprived of their liberty in Aruba: persons under a deportation order, those undergoing detention in lieu and persons in pre-trial detention.

503. Although an extensive account of the penal system in Aruba will be provided under article 10, the most important means of coercion which may be taken against a suspect and the time limits attached to each will be covered below. The articles mentioned, unless otherwise indicated, are contained in the Aruban Code of Criminal Procedure.

504. After examining the suspect, the public prosecutor or assistant public prosecutor may order that he or she be remanded in custody pending the investigation (article 38). This procedure may only be followed in those cases in which an offence has been committed for which a warrant of arrest may be granted (article 39, paragraph 1). The suspect may be remanded in custody for a period of four days. If circumstances necessitate it, the suspect may be re-examined by the public prosecutor and remanded in custody for a further six days. (article 39, second sentence).

505. If the suspect is not remanded in custody, he or she must be released immediately (article 41, paragraph 1). The examination may not last longer than six hours, excluding the period between ten p.m. and eight a.m. (article 41, paragraph 2).

506. If, during the investigation, sufficient evidence emerges of the suspect's guilt the examining magistrate may submit an application to the public prosecutor to issue a warrant of provisional arrest against the suspect (article 67, paragraph 1). The warrant is valid for a period of eight days and may be extended by the examining magistrate for a further eight days after an application has been submitted to the public prosecutor. Should the warrant not be issued by the public prosecutor within three days of submission of the application, the suspect is ipso jure released from custody (paragraph 2).

507. Where crimes of a serious nature have been committed, warrants may be issued to arrest suspects, or if they are already under provisional arrest, to keep them under arrest. Such orders may only be issued if there is good reason to believe that a suspect will escape or that society would otherwise be at risk (article 76, paragraph 1). The suspect is released in all other cases (paragraph 3).

508. Warrants to arrest suspects or keep them under arrest are valid for a period of eight weeks only before the start of the investigation at the trial (article 104, paragraph 1). The period may be extended by further periods of eight weeks before the start of the investigation at the trial (paragraph 2). Should the investigation at the trial be underway before the period of eight weeks has expired, the order is valid for an unlimited period of time (paragraph 3).

509. At every stage, the suspects are given the opportunity to contest decisions to exercise the above means of coercion. They are entitled to assistance by counsel pursuant to article 50 bis of the Aruban Code of Criminal Procedure. Moreover, they are also entitled to access to the various relevant judicial documents (article 50 quinquies).

Article 10: Treatment of persons deprived of their liberty

510. The principle included in paragraph 1 is the basic premise of the statutory regulations relating to those persons who have been deprived of their liberty. Indeed, it is justifiable that exceptional rules be dawn up for persons who are lawfully deprived of their liberty. In principle, the fundamental freedoms

laid down in the first section of the Constitution of Aruba apply equally to detainees. Only in those cases in which a court judgement denies a detainee the exercise of certain fundamental rights may any departure be made from these terms of the Constitution.

511. The Prisons Ordinance and the Prisons Decree apply to those persons who have been convicted of or are suspected of committing an offence. When Aruba was still part of the Netherlands Antilles the island possessed only one remand centre. The prison was established on the island of Curaçao. As a result of Aruba's separate status and due to an increasing number of convictions for drug-related offences in particular, a prison on Aruba itself was considered necessary. A completely new prison, with more than 200 places, was opened in the second half of 1990. To illustrate, information will be provided on this new facility: see table XIX (total capacity of the prison) and XX (an overview of sentences of more than one year).

512. The remand centre is still in use as such, but also serves as temporary accommodation for aliens under a deportation order. The above-mentioned legislation, in addition to the Country Decree on the prison and remand centre Supervisory Committee are no longer consistent with the radically altered situation. This accounts for the Kingdom's reservations in relation to paragraph 2 and paragraph 3, sentence 2, of this article of the Covenant. A completely new Country Ordinance on regulations relating to prisons and other forms of detention is therefore currently being drawn up.

513. The Mental Health Ordinance applies to those persons who, owing to mental illness, need or wish to be committed to an institution. The Minister for Public Works and Health is responsible for the committal of mentally ill persons in those cases in which it is in the interests of protecting the latters' health. The Minister for General Affairs is responsible in those cases in which committal is necessary in the interests of public order. The president of the Joint Court of Justice of the Netherlands Antilles and Aruba is responsible for committals in the case of persons who have been convicted of an offence. Persons may also be committed at their own request. A person may be committed for a maximum of one year under the terms of the above ordinance. Should there be sufficient reason, the term may be extended by further periods of the same length; apart from the doctors involved and other institution personnel, the patients themselves are consulted on such extensions. Those persons who are committed at their own request may remain in the institution for a maximum of 24 hours. The existing facility for the mentally ill is situated next to the hospital, guaranteeing reliable medical care and guidance.

514. The Country Ordinance on young offenders contains further provisions relating to young persons who are committed to a house of correction, and are thus deprived of their liberty. Certain provisions of this ordinance, such as the possibility of placing young persons on a diet of bread and water or putting them in solitary confinement will be rescinded when the revised Country Ordinance on prisons, which at the time of the drafting of this report was under preparation, comes into operation. Similar provisions still existing in the Aruban Criminal Code have not been applied for many years and will be rescinded.

515. Regulations relating to the segregation of detainees, referred to in paragraphs 2 and 3 of article 10 of the Covenant, are included in the Prisons Ordinance. Article 9 stipulates that the various categories of detainees must be segregated as far as possible and that men and women may never be detained in the same quarters. Unconvicted and convicted detainees must be segregated, while in the remand centre separate quarters are reserved for persons under a deportation order (article 10). Convicted juveniles are segregated from adult detainees (article 11)

516. In addition to the above, detainees are divided into various categories, based on their past history, their behaviour and the offence for which they have been convicted. At the same time, account is taken as far as possible of age and level of development as well as the length of the sentence (article 13, Prisons Ordinance).

517. Article 22 of the Prisons Ordinance also provides scope for disciplinary measures to be taken against detainees. Such measures include a ban on reading matter, visits, writing or receiving letters or confinement to cell for a maximum of four weeks.

518. While serving their sentences, detainees need to be prepared for their re-entry into society. Responsibility for the necessary guidance is shared by The Probation and After-Care Service. Article 42 of the Prisons Decree contains a special ruling for young persons who, by being given more freedom towards the end of their sentences, are prepared more gradually for their return to society.

Table 1: Total capacity penal institutions

Remand centre complex

Unconvicted men	1 wing	10 triple cells
Convicted men	1 wing	10 single cells
Young persons	1/2 wing	10 single cells
Segregated/unconvicted	1/2 wing	10 triple cells
Convicted men	1 wing	10 single cells

Prison complex

Men serving long sentences	1 wing	12 single cells
	1 wing	10 triple cells
Reception facility men	1 wing	12 triple cells
		25 cells
Women's wing		10 triple cells
Detention cell		1 cell
Observation facility		4 cells
Solitary confinement		3 cells
Psychiatric facility		5 single cells

Table 2: Overview of sentences of more than one year

Nature of offence	*Number*	*Nature of offence*	*Number*
Offence under Country Ordinance on Drugs	118	Attempted assault	1
Theft	47	Attempted arson	1
Statutory rape	2	Embezzlement	1
Rape	1	Falsification	2
Receiving stolen goods	2	Manslaughter	3
Extortion	3	Attempted manslaughter	2
Fraud	1	Intentional use of forged or falsified document	3
Armed assault	4	Indecent assault	3

Article 11: Prohibition of detention for inability to fulfil a contractual obligation

519. The imprisonment of a person merely on the grounds of inability to fulfil a contractual obligation is neither conceivable nor possible as far as Aruba is concerned.

520. However, the Aruban Code of Civil Procedure creates scope for a court to issue a warrant for the arrest of a respondent if it has found against him in a civil lawsuit (articles 465 to 491 inclusive). This provision is consistent with article 26 of the Convention on civil procedure concluded at The Hague on 1 March 1954 (Treaty series 1954, 40; applicable to Aruba from 2 April 1968), and is also consistent with article 11 of the Covenant. The Aruban Government bases its conclusions on the arguments set out in the second report of the Netherlands Government.

521. The Aruban Code of Criminal Procedure (articles 61 to 61b inclusive, article 152, paragraphs 2 and 3 and article 152a) contains provisions relating to the detention of witnesses and experts who refuse to give statements during criminal proceedings, either during the preliminary judicial examination or during the trial.

522. Moreover, article I.5 of the Constitution of Aruba contains the necessary safeguards. See the remarks under article 10.

Article 12: Right to leave one's country

523. The government of Aruba would point out that the term "State" is used in this article, but that the Kingdom - on signing the Covenant - declared that, in this matter, the Netherlands and the Netherlands Antilles must be regarded as two separate states. This reservation has also applied to Aruba from 1 January 1986.

524. Under the terms of the Country Ordinance on admittance and deportation, all individuals lawfully in the territory of Aruba have the right to freedom of movement and freedom to choose their residence. The right to freedom of movement is expressed in so many words in article I.8 of the Constitution of Aruba. Article I.8 was deliberately formulated in this narrow way and does not include, for example, provisions laying down the right to enter, leave or remain in the country or stipulating that an individual may only be arrested in cases laid down by country ordinance. At the same time, article I.8 is not so far-reaching that individuals may always gain admittance to public places. Many such places have their own regulations relating to their particular nature and use. It would, for example, be unacceptable for the general public to have access to post offices outside opening hours or that bus shelters could be used as sleeping accommodation. The scope created in article I.8 to impose restrictions on freedom of movement in cases laid down by a country ordinance is necessary as a large number of legislative, administrative and judicial measures may lead to such restrictions. Examples include the right of the police to stop individuals for questioning or to order people to move on to break up an unlawful assembly. Another example is the case in which a suspended sentence imposed by a court places restrictions on freedom of movement. The phrase "in cases laid down by country ordinance" provides the safeguard that restrictions to freedom of movement may only be imposed on that basis. The Aruban government is of the opinion that the said provisions are consistent with the grounds on which restrictions may be imposed as mentioned in paragraph 3 of article 12 of the Covenant.

525 No restrictions are imposed with regard to changes of address within Aruba, apart from the fact that they need to be entered in the population register and registry of births, marriages and deaths. However, those who have come to Aruba to perform domestic work are subject to different regulations. They must possess a written employer's statement from a local Aruban citizen for the first ten years. During that time they are not allowed to be otherwise employed. Local employers are, in their turn, obliged to provide their domestic staff with board and lodgings and health insurance

coverage. The accommodation provided for domestic staff must meet certain requirements, relating for example to furnishings and size. While working for a certain employer, members of the domestic staff are not permitted to seek accommodation elsewhere.

526. The situation as described above originated in the need to protect both parties. It was deemed necessary to provide employers, who shoulder a considerable burden of responsibility for their employees, some measure of security in return, while the foreign employees were provided with the security of a salary, accommodation and meals.
The government is intending to draw up new regulations in which the ten-year period will probably be reduced considerably.

Article 13: Prohibition of expulsion without legal guarantees

527. Cases in which aliens may be regarded as lawfully resident within the territory of Aruba are laid down in the Country Ordinance on admittance and deportation, which implements article 1.9 of the Constitution of Aruba. Before discussing the country ordinance in more detail, it should be noted that a complete revision of its provisions is desirable. The situation is undergoing constant and rapid change; the Aruban employment market attracts a large number of potential employees from the countries and islands in the region, so that applications for residence and work permits are steadily increasing. A special committee, in which the Public Order and Security Department, the Immigration Department and the Legislation Department and the prosecutor general are each represented, was at the time of the drafting of this report engaged in drawing up proposals for a revision of the said country ordinance, in which present policy with regard to admittance will be laid down. It hardly needs to be said that in this way legal security will benefit, as criteria and standards will be laid down in the law itself, rather than in a collection of circulars and memoranda.

528. The main feature of policy on the admittance of aliens may be regarded as a restrictive application of the scope provided in the aforementioned country ordinance. The size of the island Aruba plays an essential role: such a small country cannot absorb an unlimited number of people. The burden placed on the infrastructure, i.e. accommodation, the provision of water and electricity, the road network etc, would be too great and would lead to undesirable situations. The restrictive policy is based on employment market criteria: only those who do not take a place which could otherwise be filled by an Aruban resident are admitted to the employment market and/or Aruba.

529. The Country Ordinance on admittance and deportation also contains a number of provisions relating to deportation. The grounds on which a residence permit may be rescinded are laid down in article 14. Such grounds include: an irrevocable conviction relating to an offence under the terms of the country ordinance itself or an irrevocable conviction involving a prison sentence of three months or longer. In addition, a residence permit may also be rescinded in the interests of public morals or the general good. Persons who ipso jure have not been granted admittance or whose residence permit has been rescinded and who have not left Aruba within a certain time limit may be deported. Persons who have rights of admittance but whose residence in Aruba may be regarded as undesirable on moral grounds or in the interests of public order, peace or security may also be subject to deportation (article 15 Country Ordinance on admittance and deportation). Under the terms of article 18 of the country ordinance, appeal may be made to the Governor against the Minister of Justice's decisions on deportation. The procurator-general provides recommendations on each appeal, while the Advisory Council is also heard before a decision on the appeal is made by country decree. The revision of appeals procedures, as described under article 2 (Country ordinance on administrative procedure) will also apply to appeal against decisions made under the terms of the country ordinance on admittance and deportation. Under the present appeals procedure, a deportation order or residence permit rescindment is suspended pending the outcome of hearing so that the person in question may remain in Aruba to attend the proceedings. With regard to other decisions made under the terms of the aforementioned country ordinance, the parties concerned may apply for an interlocutory judgement

from a civil court to suspend enactment of the decision pending appeal. In relation to the numbers applying for a residence permit - some 1200 per month - few applicants made use of their scope for appeal:

1989:........................... 17
1990:........................... 47
January-June 1991:.... 15

530. It is interesting to note that those who have followed the above-mentioned procedure and whose appeal has been finally dismissed do not immediately invoke the terms of article 1382 of the Aruban Civil Code to institute civil proceedings before the court of first instance. The Aruban government is of the opinion that the forthcoming introduction of the Country Ordinance on administrative procedure will provide aliens with adequate safeguards against decisions relating to deportation or the refusal, amendment and rescindment of residence permits. In addition, the objection and appeal procedures included in the country ordinance will benefit legal security, while they are consistent with the provisions of article 14, paragraph 1 of the Covenant on the independence and impartiality of the court.

531. As there are considerable employment opportunities in Aruba, increasing pressure is being brought to bear to relax policy on admittance. However, the government has continued to conduct a restrictive policy which has led to a great increase in the number of illegal aliens in Aruba. Estimates for 1991 vary from 2000 to 5000 illegal aliens, most of whom entered as tourists and remained in the country after their permits had expired.

Article 14: Entitlement to a fair and public hearing

532. The principles of a fair and public hearing are laid down in this article. The government of Aruba not only endorses the remarks made by the Netherlands government in the second report, but also refers to the enshrinement of these principles in the Constitution of Aruba and in other regulations.

533. With regard to paragraph 1, the equality of all before the courts is expressed in statutory regulations on procedural law. Each party to a court procedure, whether criminal proceedings, a civil law suit or the future administrative procedure, has the same rights and obligations. The provisions laid down in the first paragraph with regard to independent and impartial tribunals have already been discussed in items 91 to 100 inclusive of the second report as they relate to the courts of the Kingdom. The judges of the Court of first instance and of the Joint Court of Justice of the Netherlands Antilles and Aruba are appointed and dismissed by the Crown (articles VI.10 and VI.16 of the Constitution of Aruba).

534. The *presumptio innocentiae* principle as contained in paragraph 2 is laid down in article I.6 of the Constitution of Aruba, even though this principle would seem to be so self-evident that regulations on the matter might be regarded as unnecessary. In addition, article 50 of the Aruban Code of Criminal Procedure states that a person is suspect only if facts or circumstances give rise to a reasonable suspicion that he or she might be guilty of having committed an offence. It can therefore be construed that a suspect may be regarded as guilty only after it has been established that he or she actually committed the offence. Article 74 of the said Code also contains a provision in the matter:

> "Should there be insufficient evidence with regard to the nature of the offence, as to its commission or the guilt of the suspect, the court refuses right of access and either releases the suspect from prosecution or orders a continuation of the preliminary investigation."

535. The following may be noted with regard to the various rights included in paragraph 3.

(a) Subparagraphs a, b and f: Article I.6, paragraph 3a and b of the Constitution of Aruba defines in almost identical words the rights contained in these sections. On the basis of article 62 of the Aruban Code of Criminal Procedure, the investigating magistrate appoints an interpreter to inform the suspect of the accusations brought against him or her. This provision is respected in practice and problems in this regard are unknown. Article I.5 of the Constitution of Aruba provides for similar facilities with regard to persons who have been deprived of their liberty.

(b) Subparagraph c: The right to be tried without undue delay is not included in so many words in Aruban regulations. The Aruban Code of Criminal Procedure contains a number of provisions with regard to time limits in criminal proceedings, so that the suspect need not be detained or the trial conducted for longer than strictly necessary. The Aruban government is not aware of any problems having arisen in the matter in practice. With regard to persons who have been deprived of their liberty, article I.5, paragraph 3a of the Constitution of Aruba contains the provision that the court must decide "in the short term" whether such action has been taken lawfully. The Aruban government also interprets this provision of article I.5 as applicable to those against whom investigatory proceedings are being conducted.

(c) Subparagraph d: In accordance with the reservation made by the Kingdom (to maintain the statutory power to remove a person being prosecuted for a criminal offence from the court in the interests of proper procedure) article I.6 of the Constitution of Aruba has no provision corresponding to paragraph 3d.

(d) Subparagraph e: The right to examine, or have examined, witnesses against, and to obtain the attendance and examination of witnesses on behalf of the suspect is also guaranteed in Aruba. Article I.6, paragraph 3d of the Constitution of Aruba contains a provision to this effect. The court provides the suspect or his counsel with generous scope for the conduct of examination; limitations are only imposed in those cases in which abuse or the improper use of this right occur. The Aruban Code of Criminal Procedure implements this right. According to the terms of article 155, paragraph 2 "the court grants the suspect and his or her counsel the opportunity to question the witness and to submit any evidence against the witness and counter to his or her statement which might serve the interests of the suspect's defence" (article 162, paragraph 1). In addition, articles 55 to 60 inclusive and 139 to 161 inclusive of the said Code apply to the role of witnesses and experts in criminal proceedings.

(e) Subparagraph g: The principle that persons may not be compelled to testify against themselves is not included explicitly in Aruban legislation. However, the Aruban Code of Criminal Procedure contains no provisions subjecting a suspect to any means of coercion, such as detention, for refusing to answer the questions of the investigating magistrate or court. Witnesses (article 152, paragraph 2) and experts (article 162) may, however, be subject to coercion.

536. The following is worth noting in connection with the above. A proposal for a country ordinance containing traffic regulations has been introduced in Parliament (Country ordinance on road traffic). The new country ordinance will replace current traffic legislation. In the interests of road safety, the proposed country ordinance contains scope for the application of urine or blood tests as a means of preventing people from driving under the influence of intoxicating substances, such as alcohol or drugs. In accordance with the regulations applicable in the Netherlands, such tests may only be conducted with the permission of the suspect driver. In the opinion of the Aruban government, the regulation relating to blood and urine tests does not, therefore, conflict with the provisions of section (g). The Supreme Court reached the same conclusion in its judgement of 20 November 1990.

537. With regard to paragraph 4, articles 41 to 41m inclusive of the Aruban Criminal Code (AB 1991 no. GT 50) contain provisions relating specifically to the application of the criminal law to young persons.

538. Article VI. 10, paragraph 2 of the Constitution of Aruba contains the provision that the members and president of the Joint Court of Justice are appointed for life by the Crown. Nominations are submitted by the Court and the Ministerial Cooperation Council (article VI.II, paragraphs 1 and 2). In order to be eligible for nomination, the president and members of the Court must meet the requirements laid down in article VI.14 of the Constitution of Aruba which correspond to those to which judges in the Netherlands are subject.

539. In consequence of the reservation made by the Kingdom in relation to paragraph 5, article VI.17 of the Constitution of Aruba stipulates that the Supreme Court is authorised to dismiss the president or other members of the Joint Court of Justice of the Netherlands Antilles and Aruba in the following cases: if, by final court judgement, they have been convicted of an offence, have been placed under guardianship or have contravened the provisions relating to their independent position.

540. The right to have a conviction and sentence reviewed by a higher tribunal is contained in articles 216 to 237 of the Aruban Code of Criminal Procedure as far as the criminal law is concerned, and in the Cassation Regulations for the Netherlands Antilles and Aruba (Kingdom Act of 20 July 1961, Bulletins of Acts, Orders and Decrees 212), which is based on article 23, paragraph 1 of the Charter for the Kingdom of the Netherlands, as far as both the criminal and civil law are concerned. Regular use is made of the scope to submit appeal in cassation in The Hague against judgements passed in Aruba.

541. With regard to the right contained in paragraph 6 to compensation in the case of a conviction as the result of a miscarriage of justice, articles 126a to 126e inclusive of the Aruban Code of Criminal Procedure contain a regulation relating to compensation for the time spent in detention. With regard to persons who have been deprived of their liberty, article 1.5, paragraph 4 of the Constitution of Aruba contains the following provision:

> "Those who have been subject to deprivation of liberty in violation of the provisions of this article, are entitled to compensation".

542. With regard to the *ne bis in idem* principle, as contained in paragraph 7, the reservation made by the Kingdom fully applies to Aruba.

Article 15: Principle of nulla poena sine previa lege poenali

543. This article contains the principle that criminal proceedings may only be instituted against an individual if the offence he or she is suspected of committing was defined as such by law at the time it was committed. Article 1 of the Aruban Code of Criminal Procedure contains the same provision, while article I.6 of the Constitution of Aruba contains the following provisions:

> "1. An act may be deemed a criminal offence solely pursuant to a statutory penal provision introduced prior to the offence.
>
> 2. Those subject to criminal proceedings are deemed innocent until guilt has been established according to the country ordinance ..."

544. With regard to the third sentence of article 15 paragraph 1, reference may be made to a recent judgement of the court of first instance. In reaching its decision, the court could not impose the heavier penalties laid down in the Country Ordinance on drugs (AB 1990 no. GT 7), as the Country Ordinance was amended to allow for such penalties after the offence in question had been committed.

Article 16: Right to recognition as a person before the law

545. With reference to observations made by the Netherlands government in the previous two reports, it may be noted that the Aruban legal system is based on the principle that each citizen has the right to recognition as a person before the law and is entitled to exercise rights and enter into obligations. Article 4 of the Aruban Civil Code prohibits attainder. The Aruban government shares the Netherlands government's view that this article is not an impediment to the imposition of restrictions on the powers of action of, for example, minors or the mentally disturbed.

Article 17: Right to privacy

546. The various aspects of the right contained in this article are included in a number of separate provisions. It may be noted that this article may be invoked directly before the courts and, horizontally, between citizens individually. (President, Amsterdam Court of Appeals, 6 August 1987).

547. The right to protection against arbitrary interference in an individual's private life or correspondence is contained in articles I.16, I.17 and I.18 of the Constitution of Aruba.

548. Article I.16 of the constitution places an obligation on the legislature to draw up by country ordinance further regulations for the protection of personal privacy in the recording and releasing of personal data. The relevant country ordinance was at the time of the drafting of this report under preparation. On the basis of additional article VII of the Constitution of Aruba, article I.16 paragraph 1, laying down that "Each individual has the right to the protection of his or her personal privacy, save in those cases in which restrictions are imposed by or pursuant to country ordinance", was introduced on 1 January 1991 .

549. Article I.17 was similarly introduced on 1 January 1991 (additional article VIII of the Constitution of Aruba). The following provision was applicable up to that date:

> "A person's dwelling may not be entered against his will unless the instructions to do so have been given by an authority designated by country ordinance to give such instructions, and unless the formal conditions, laid down by country ordinance, are respected".

550. The Country Ordinance on exceptional transitional provisions (AB 1987 no. GT 3) amended the land's ordinances containing the provisions relating to the entry of dwellings to correspond to the currently applicable provisions of article I.17. Article I.17 lays down that only those who are authorised by or pursuant to country ordinance and who are in the possession of written judicial authorisation may enter a dwelling against the occupant's will in cases laid down by country ordinance. Those who enter are obliged to provide identification and to inform the occupant of the purpose of their entry. In certain cases, exceptions may be made to these provisions by country ordinance. The Country Ordinance on the Fire Service (AB 1991 no. 64), which was introduced on 11 June 1991, lays down that no warrant, identification or announcement of purpose is required before entry into any building, including a dwelling, for the purpose of extinguishing a fire. The relevant provision, article 5, paragraph 3 of the Country Ordinance on the Fire Services reads as follows:

> "3. Contrary to article I.17, paragraph 1 of the Constitution of Aruba, no warrant is required for an entry as referred to in paragraphs 1 and 2, and article I.17, paragraph 2 of the Constitution of Aruba does not apply".

551. As is the case in relation to the aforementioned fundamental right, the privacy of correspondence and of telephone and telegraph communications provided for in article I.18 is not an absolute right. The tapping of telephones and other such means of communication has been prohibited

from 1 January 1991, but the Aruban Criminal Code contains no penalties for infringements of this prohibition. A provisional country ordinance was introduced in parliament on 1 January 1991 amending the Criminal Code so that criminal proceedings might be instituted against such infringements in the future. The proposed penal provisions are subject to two exceptions. In the first place, the provisional country ordinance makes an exception for the placing of taps as part of criminal proceedings. In such cases, the public prosecutor may request the examining magistrate to issue a warrant authorising taps to be placed on telephones or other means of telecommunications. Further regulations with regard to such authorised tapping need to be drawn up together with the Netherlands Antilles in view of the fact that the Aruban Code of Criminal Procedure is a uniform country ordinance, meaning that, as the Netherlands Antilles and Aruba have a Joint Court of Justice, legislation relating to procedures needs to correspond as far as possible. The second exception made by the country ordinance relates to the security tap or the tapping of telephones and other means of communication in the interests of state security. The director of the Security service may request the ministers of General Affairs, of Justice and of Transport and Communications to authorise the placing of such a tap. Authorisation is subject to a time limit of three months.

Article 18: Freedom of religion and belief

552. This article deals with freedom of conscience, thought and religion, while the freedom to adopt or have a religion or belief of one's own choice is also referred to.

553. There are a great number of churches and other places of worship in Aruba. Although the majority of Arubans are Roman Catholics, religious minorities are given every opportunity to practise their faith. Those who are in penal institutions are also given the opportunity to practise their religion and to receive religious instruction. (Article 20 and 21 of the Prisons Regulations ordinance)

554. Article I.15 of the Constitution of Aruba grants everyone the same rights, although in certain cases limitations may be imposed by country ordinance. The grounds included in article 18 paragraph 3 on which limitations to the right to freedom of religion may be imposed are also contained in the Constitution of Aruba. However, such limitations have, in practice, never been imposed.

555. With reference to article 18, paragraph 4 of the Covenant, freedom of choice of education is laid down in the Constitution of Aruba. Each individual may establish a school and provide instruction consistent with his or her religious beliefs. This right has existed for many years in Aruba and the Netherlands Antilles. The result is that education based on various beliefs is provided in Aruba. The schools, which are governed by various private associations and foundations, are fully funded by the State. An overview of the number and types of school in Aruba is provided in paragraphs 421 to 423 of this report.

Article 19: Freedom of expression

556. The right to hold opinions and the right, inextricably connected with it, to express those opinions is safeguarded in the provisions of article I.12 of the Constitution of Aruba. Aruba has a free press with a great variety of daily newspapers in a variety of languages. Those employed in the field of journalism have formed the A.P.A.R ("Asociacion di prensa Arubano") which organises social and professional meetings at regular intervals.

557. Aruban book shops stock a wide variety of international newspapers, weekly and monthly publications, current affairs and scientific magazines, so that each Aruban may remain well-informed on matters of importance and interest. In addition, the local television network as well as the Venezuelan television channels which can be received in Aruba, transmit international news broadcasts and other current affairs programmes.

558. The reservation entered by the Kingdom that article la of the Covenant may not prevent states from requiring the licencing of broadcasting, television or cinema enterprises applies equally to Aruban regulations. At the same time, preventive censorship is prohibited: licences may not be refused on the basis of the content of broadcasts. The Television Ordinance (AB 1988 no.GT 68) and its related decrees contains provisions relating to television, while the Cinema ordinance (AB 1990 no. GT 12) contain provisions relating to opening and operating cinemas. Similar regulations exist with regard to operating radio installations. The Aruban government is of the opinion that the provisions contained in the above land's ordinances are consistent with the relevant provisions of the Constitution of Aruba and the Covenant. A further limitation to the right to freedom of expression is contained in Chapter XVI, articles 273 to 284a inclusive of the Aruban Criminal Code in which various forms of verbal abuse are regarded as offences.

Article 20: Prohibition of war propaganda

559. The obligation contained in paragraph 1 was not accepted by the Netherlands; no reservations were entered with regard to Aruba and the Netherlands Antilles, which tend to follow the Committee's own "general comments" on paragraph 1 on the subject of freedom of expression.

560. With regard to the prohibitions contained in paragraph 2 relating to racial discrimination, reference is made to articles 95 c, 143a to 143c inclusive, 151 to 153 inclusive, 448b and 448c of the Aruban Criminal Code which were originally drawn up and ratified to implement the International Convention on the Elimination of All Forms of Racial Discrimination. The Aruban government is of the opinion that the aforementioned articles also implement article 20, paragraph 2 of the Covenant. Moreover, reference may be made to Aruba's comments in the combined eighth, ninth and tenth report on the CERD Convention.

Article 21: Right of assembly

561. As is the case in the Netherlands, article I.13 of the Constitution of Aruba safeguards the right to peaceful assembly in Aruba. The Country Ordinance on association and assembly which is the same as the one in force in the Netherlands Antilles currently regulates the exercise of this right. In view of the fact that Aruba acquired a more up-to-date constitution on 1 January 1986, it is necessary to revise this country ordinance to bring it in line with the Constitution of Aruba.

562. Pursuant to article 32 of the Police Ordinance, and in the interests of public order, a written permit provided by the Minister of General Affairs or by an official chosen by the Minister is required before a public demonstration may be held.

563. As part of a general revision of the Police Ordinance, a number of provisions will be included in which, in certain clearly defined cases, limitations to the right of assembly will be permitted. The inclusion of such provision is possible under the terms of article I.13 provides scope for such provisions.

Article 22: Freedom of association

564. The right to freedom of association is also recognised on the basis of article I.ll of the Constitution of Aruba. It is obvious that this fundamental right - as is the case with regard to the majority of such rights - cannot be exercised unequivocally and unconditionally in all cases. It is possible that an association could be established for improper or even unlawful ends. The Country Ordinance on prohibited associations, which contains a number of provisions relating to the prevention of such undesirable associations, was therefore drawn up to supplement article 146 of the Aruban Criminal Code, i.e. "participation in an association whose aims are criminal shall be penalised". For the reasons mentioned in relation to the Country Ordinance on association and assembly, the country

ordinance on prohibited associations will be amended in keeping with the Constitution ofAruba. With a view to harmonisation and clarity, such an amendment will be drawn up within the framework of the aforementioned revision of the Police Ordinance.

565. A number of trade unions are active in Aruba representing the interests of, for example, government personnel, the police, teachers and manual workers.

566. Some time ago, a number of incidents relating to union membership occurred: a number of large private sector employers attempted to prevent foreign employees temporarily residing in Aruba from joining trades unions. These employees were threatened with losing their jobs and subsequent deportation. A principle of government policy, as determined in the Constitution, is that each individual is entitled to join a trade union. In the above-mentioned cases, employers attempted to disregard this principle. The situation was rectified thanks to the trade unions in Aruba.

567. No restrictions are imposed in practice or by law to the formation of political parties. In order to prevent the formation of too many small parties, however, each political party needs to pay a certain fee and to collect a certain number of signatures before it may stand for election.

568. Aruba has a multi-party system, currently with seven officially registered political parties. With regard to human rights, a branch of Amnesty International has been active in Aruba for the past ten years. In addition, a Human Rights Advisory Committee is shortly to be established consisting of representatives of various government services. The committee will be responsible for advising the government on human rights issues and for promoting the subject of human rights among the Aruban population.

Article 23: Protection of family

569. The family, in all its forms, is one of the most important cornerstones of Aruban society. Although the Western family (father mother, one or two children) is the most common form in Aruba, other forms also occur, such as one-parent families or families in which one or both parents live with their adult children.

570. Only the civil obligations associated with marriage as such are regulated by law, namely in article 74 of the Aruban Civil Code. The freedom to choose a religious marriage ceremony is fully recognised and is frequently exercised.

571. Men reach marriageable age at 18, women at 15 (article 78 of the Aruban Civil Code). Article 77 paragraph 3 of the Aruban Civil Code stipulates that both parties must give their free consent.

Article 24: Protection of the child

572. According to Aruban law (article 332 of the Aruban Civil Code), a person reaches the age of majority under civil law at the age of twenty one or if he or she is married or has been married. Under criminal law, the age of majority is eighteen (article 41 of the Criminal Code).

573. Under the terms of article 21 of the Aruban Civil Code, a child must be entered in the registry of births, marriages and deaths by the father 5 days after its birth. If the father is unable to make the entry himself, or if, for example, his whereabouts are unknown, the mother is authorised to register the child (article 22 of the Aruban Civil Code). In order to prevent the disappearance of new-born babies, the birth certificate must contain the first names of the child in addition to the names of the person entering it into the registry.

574. With regard to paragraph 3 of article 24 of the Covenant, the following may be noted. Article 15 of the Universal Declaration of Human Rights determines that each individual has the right to nationality, while no one may be arbitrarily deprived of nationality or be denied the right to alter nationality. Article 24 of the Covenant has a corresponding provision stipulating that each child has the right to nationality.

575. In 1930, the Hague Conference on the Codification of International Law accepted as a basic premise that a state must determine in its own law who may be regarded as its nationals. The state is not altogether free in this regard: in a number of cases, the recognition of nationality is laid down in an international convention for the avoidance of a conflict of laws, in other cases customary international law imposes restrictions.

576. The recognition of nationality in the Kingdom and therefore in Aruba is laid down in the Netherlands Nationality Act.

577. The main rule of the Act is the consequence of the ius sanguinis principle, i.e. that the child acquires Netherlands nationality ipso jure if the father or mother is a Netherlands national

578. Article 14, paragraph 2 of the above Act is also of relevance: no one may be deprived of Netherlands nationality if statelessness results.

579. For the record, the distinction drawn between legitimate and natural children in allocating child allowances was abolished as of 1 January 1991.

Article 25: Right to take part in public affairs

580. Section b of this article determines that every citizen has the right to vote and be elected by universal and equal suffrage. The same right is laid down in articles I.10, III.4, III.5 and III.6 of the Constitution of Aruba.

581. Article I.10 provides scope to impose limitations on both the right to vote and the right to be elected. It is self-evident that a certain age-limit is justified. Those who wish to take part in any way in the conduct of public affairs need, in the opinion of the Aruban government, to have some experience of life and some essential knowledge. It may be assumed that persons over 18 years of age who have the right to vote and those over 21 years of age who have the right to be elected possess the necessary experience and knowledge. Rights are also restricted to residents of Aruba with Netherlands nationality. For the record, aliens registered as residents of Aruba were permitted to participate in the Referendum held in Aruba in 1977 on the future status of the island.

582. In addition, reference should be made to exclusion from or loss of electoral rights as a result of a court judgement (article III.5, paragraph 2), which is consistent with article 25 of the Covenant (Supreme Court, 18 November 1981).

583. Under the terms of section b of article 25 of the Covenant, the right to vote and be elected by equal and universal suffrage must be exercised at genuine periodic elections, held by secret ballot. The provisions leave the choice of electoral system open. Under the terms of article III.4, Aruba has adopted the system of proportional representation.

584. Provisions relating to electoral rights are contained in the Elections Ordinance (AB 1987 no. 110), which includes detailed regulations relating to procedures before, during and after parliamentary elections. Article 5 of the Elections Ordinance lays down that general measures, implemented by country decree, may be drawn up to regulate the exercise of electoral rights by persons who have lawfully been deprived of their liberty. If necessary, such measures may diverge from the provisions

of the Elections Ordinance. Despite the fact that such a decree had not yet been drawn up, detainees with Netherlands nationality were provided with the opportunity to vote during the elections of January 1989. Should too many risks be attached to permitting detainees to vote, the individuals in question may vote by proxy. In this connection, reference may be made to article I.5, paragraph 5:

> "5. Those who have been deprived of their liberty may be restricted in the exercise of fundamental rights, insofar as the exercise of said rights is inconsistent with the deprivation of liberty".

585. On the basis of the above, the authorities concerned may limit the exercise of certain fundamental rights without the need to call on the provisions of a separate country ordinance.

586. Article I.2 of the Constitution of Aruba guarantees Netherlands nationals the right of access, on terms of equality to public service (article 25c of the Covenant). The fact that the terms of this article refer to Netherlands nationals only does not mean that aliens may not be employed in public service. Aliens cannot, however, invoke the terms of this article of the constitution. and they are subject to the principle that they may not be appointed to positions for which their status as aliens would render them unsuitable. Examples are certain positions in the judiciary, the police force and the Security Service. For the rest, reference may be made to the Netherlands government's comments on this article in the second report.

Article 26: Prohibition of discrimination

587. Equality before the law and the prohibition of discrimination have been dealt with under articles 2 and 3 of the Covenant.

588. With regard to the question of conflicting fundamental rights, the Aruban government would refer to the comments made by the Netherlands government in the matter in its second report, numbers 179 to 181 inclusive.

Article 27: Minorities

589. Aruba is traditionally the home of people of various nationalities, races and beliefs. An open, plural society such as Aruba respects each citizen and each temporary guest, i. e. individuals are, in principle and within the limits imposed by statutory norms and values, free to lead their lives according to their own values and beliefs. Different people make as many different choices on a great variety of issues. Conflict or expressions of discontent or unrest have never yet resulted. Wherever possible, within the limitations imposed by the size of the country, individuals are free to give expression to their own personalities.

590. The Aruban Government has not implemented separate policy on minorities up to now, as it is of the opinion that, in view of the large number of nationalities resident in Aruba, (see Table II: Composition of the population by nationality, November 1990), minorities as such do not exist.

591. The various racial and ethnic groups are provided with every opportunity to maintain their cultures, resulting in a large number of cultural manifestations and socio-cultural clubs, including the "Alliance Francaise", the "Amigos de Colombia", a Portuguese club, a Chinese club and all active exchange programme with Venezuela.

592. Although Netherlands is the official language and Papiamento the mother tongue of the majority of the population, English is widely spoken and the various ethnic and racial groups residing in Aruba are given every opportunity to speak their own languages and preserve their own identities. Spanish,

Patois (the dialect of French spoken, for example, in Haiti), Chinese and Portuguese are widely spoken.

593. As regards electoral rights and the right to access to public service, reference is made to the comments under article 25.

594. With regard to freedom of worship, reference is made to the comments under article 18.

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Article 1. Right of self-determination

595. In paragraph 442 mention was made of a proposal to revoke article 62 of the Charter for the Kingdom of the Netherlands and also to provide that Aruba and the Netherlands Antilles retain the right to secede from the Kingdom of their own volition in accordance with a procedure fixed by national ordinance. An amendment of this kind to the Charter was then the subject of discussion. Since then, the Charter for the Kingdom of the Netherlands has been amended and article 62 revoked by Kingdom Act of 24 December 1994, which took effect in 1995. The procedure to be followed by Aruba if it wishes to terminate the present constitutional arrangement is laid down in articles 58-60 of the Charter.

Article 2. Non-discrimination

596. In paragraph 451, it was mentioned that Article 1, paragraph 1 (d), of the Admission and Expulsion Ordinance entitled the legitimate family of an Aruban man - but not that of an Aruban woman - to be admitted to Aruba. A draft Ordinance on Admission and Expulsion, abolishing this discriminatory provision was under preparation, but has not yet taken effect. However, the discrimination between Aruban men and women in terms of the admission of their legitimate family has been abolished in practice.

597. The draft Ordinance on Administrative Procedure, mentioned in paragraph 452, under which all exceptional appeal and objection procedures were to be replaced by a single administrative procedure (i.e. appeal to a court of first instance), which was still pending, has since been approved by Parliament and took effect on 1 December 1997.)

Article 4. Limitations regarding measures that derogate from the Covenant

598. The Disaster Ordinance (SPG 1989, no. 59) that had been drawn up, but had not yet become operative as guidelines for its implementation had not yet been prepared, as was mentioned in paragraph 467, took effect on 3 April 1992. To implement the Ordinance further rules were laid down by national decree of 21 February 1992.

Article 6. Right to life

599. In paragraph 481 it was mentioned that victims of crimes of violence intended to deprive a person of life did not have any specific statutory right to 'victim support' on Aruba. A separate part of the New Code of Criminal Procedure, which took effect on 1 October 1997, is now devoted to the position of victims. The new Code strengthens the position of the victim.

(a) Article 374, paragraph 1, of the New Code of Criminal Procedure provides that a victim may join in the criminal proceedings at first instance if his/her claim for compensation does not exceed 50,000 guilders and the claim is not being heard by the civil courts. The claim should, in the view of the court, be of such a nature that it is suitable to be decided in the criminal case.

(b) Article 206, paragraph 1, of the New Code of Criminal Procedure provides that joinder is possible even in a preliminary phase of the investigation.

(c) Article 206, paragraph 3, provides that when an injured party indicates that he/she will claim compensation or wishes to be informed about the progress of the proceedings, mention of this should be made in the official report.

(d) Article 206, paragraph 4, provides that when the injured party requires help and support, the necessary assistance must be provided.

(e) As regards victim support facilities, mention should be made of the establishment in November 1995 of the non-governmental foundation 'Fundacion pa hende muher den Dificultad' (Foundation for Women in Distress), whose aim is to provide support for women who have been the victims of domestic violence.

Article 7. Prohibition of torture

600. The Police Complaints Decree(AB 1988, no. 71), which was mentioned in paragraph 491, was found not to function properly in practice. Steps have been taken to amend the Decree and a draft has been submitted to the Legislation Department.

Article 9. Right to liberty and security of person

601. The new Code of Criminal Procedure creates more rights for suspects.

602. Paragraph 504 described how a suspect who is detained in police custody during the investigation had to be brought before a judicial authority within 10 days. Article 89, paragraph 1, in conjunction with article 87, paragraph 1, of the new Code of Criminal Procedure stipulates that a suspect who has been detained in police custody during the investigation has to be brought before a judicial authority within 3 days.

603. Paragraph 504 equally described that the remand in custody was unlimited. Under the New Code the period of a remand in custody is limited to 136 days.

604. In paragraph 509 it was mentioned that Article 50 bis of the Code of Criminal Procedure provided that a suspect was entitled to be represented by counsel. The New Code provides the statutory basis for a roster of lawyers to provide legal assistance to defendants in custody.

Article 10. Humane treatment in the case of deprivation of liberty

605. Paragraph 511 mentioned that a new prison was to be opened in the second half of 1990. The old remand centre would continue to function as such and would also serve as a detention centre for aliens. However, meanwhile the old remand centre is no longer used as a detention centre for aliens. Aliens are now detained in police cells, which have been refurbished following the recommendations of the Committee for the Prevention of Torture (CPT). The old remand centre is now a drug rehabilitation centre.

606. The Social Services Bureau has existed since 1995. This is a project run by IPA students (Aruban teacher training course) under which students give lessons to the inmates of the Aruba Correctional Institute.

607. In paragraph 512 it was mentioned that work had started on the drafting of a new national ordinance containing rules governing the prison system and forms of detention other than imprisonment. The National Ordinance on the Execution of Custodial Sentences will in principle

replace the Prison System Ordinance, the Prison System National Decree and some provisions of the Criminal Code.

Article 12. Freedom of movement

608. The requirement that live-in domestic servants should remain with the same employer for 10 years (see paragraph 526) has been changed. It is now possible for them to change employers, provided they continue to work as domestic servants for at least 5 years.

609. It should be mentioned that the right to leave one's country can be limited by statutory regulations, for example the Criminal Code (person concerned is suspected of a criminal offence), the Conscription Ordinance (person concerned must still perform national service), the Tax Debts Settlement National Ordinance (person concerned must pay his taxes before leaving) and the Passport Ordinance (person concerned must have valid travel documents). These regulations also existed at the time of the third report, but no mention was made of them then due to an oversight.

Article 13. Prohibition of expulsion without statutory safeguard

610. The Admission and Expulsion Ordinance defines when an alien is lawfully resident on the island. The Ordinance is currently being revised.

611. The revision of the Admission and Expulsion Ordinance referred to in the third report has still not been completed.

Article 14. Right to a fair trial

612. With regard to the right to defence counsel mentioned in paragraph 535 (d), articles 61-69 of the new Code of Criminal Procedure make arrangements for picket services for lawyers. The suspect is assigned counsel as soon as he/she is detained in police custody; if the suspect has not been detained in police custody, counsel is assigned as soon as the prosecution starts and his/her inability to pay has been adequately demonstrated. (NB Under article 48, paragraph 3, of the New Code the suspect has the right to a defence counsel for the police interrogation.)

613. With regard to the minimum age not being regulated, as mentioned in paragraph 537, article 477 of the new Code of Criminal Procedure provides that no one may be prosecuted for a criminal offence before reaching the age of 12 years.

Article 17. Right to privacy

614. Article 387 of the Criminal Code makes it an offence for officials to violate the confidentiality of correspondence.

615. As mentioned in paragraph 548, a start was been made on the drafting of a national ordinance containing rules governing the recording and provision of confidential personal particulars. This draft national ordinance is still under preparation. The new Code of Criminal Procedure (articles 167-174) regulates the possibility of tapping data communications in the course of criminal investigations.

Article 22. Freedom of association

616. The Human Rights Committee mentioned in paragraph 568 came into being in 1991 and was put on a formal basis in 1993.

Article 24. Protection of the child

617. There are various non-governmental organisations active in the field of children and young people's welfare. The Social Affairs Department is preparing a national youth plan in co-operation with governmental and non-governmental organisations.

> NB. The National Youth Plan was presented to the Minister of Social Affairs, Health, Culture and Sport in April 1997.) The Ministry of Social Affairs, Health, Culture and Sport is also preparing projects in the 'barrios' (neighbourhoods) for different age groups. The Ministry of Education and Employment has started the 'Traimerdia' (in the afternoon) project for the after-school care of children of working parents.

618. A private member's bill to regulate child care centres was presented to Parliament.